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POSTHUMOUS ADOPTION

By

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The decisions of the Privy Council in *Amarendra Man Singh* v. *Sanatan Singh*[1] and *Anant Bhikkappa* v *Shankar Ramachandra*[2], are two mile-stones in the field of the law of adoption The former postulated that the object of adoption was to perpetuate the line and it did not depend on the existence or otherwise of any property The latter coming a decade later set at rest another contention holding that property which might have vested elsewhere than the adopting widow would also revert to the adopted son The two decisions have no doubt put in a certain uniformity into the law of adoption

The first of the two decisions when it set down what the object of the adoption was and decided whether adoption was or was not dependent on the existence of property did not consider what the effect of their decision would be The second when it said an adoption would have the effect of divesting the property which vested already elsewhere did not consider whether it was subject to respecting of dispositions made earlier or if they had to be respected what would be its effect vis-a-vis the decision in *Man Singh's case*[1] In the result after *Man Singh's case*[1] there were varied decisions of the several High Courts as regards the effect of adoption relating back to the death of the father With the quietus given to the conflict by *Anant Bhikkappa's case*[2] fresh conflict is to arise. The nature of conflict that may arise would be adverted to later

This decision in *Anant Bhikappa's case*[2] overruled the decision of the Bombay High Court in *Balu Sakharam* v *Lahoo Sambhaji*[3] It may be taken that till the decision of Privy Council in *Anant Bhikkappa's case*[2] the law as laid down in *Balu Sakharam's case*[3] was the fairly established law on adoption in Bombay Presidency. In the latter case Rangnekar, J , observed " A Court of law ought to hesitate before upsetting a long course of Judicial decisions and particularly where on the faith of such decisions rights of the subjects have for a long time come into existence and dispositions of property have been made and entered into "

This view was given importance in *Dasappa* v *Seshagiri Rao*[4] Unfortunately this aspect of the case was not adverted to by the Privy Council when they overruled *Balu Sakharam's case*[3] and opened the field for taking away property from one person and giving it to another just for no other reason than that people are now asked to view the effect of adoption differently from how they were viewing it, at any rate in Bombay, for over decades

1. (1933) 65 M L J 233 L R. 60 I A 242 : (P C) I L R. 12 Pat. 642 (P C)
2. (1943) 2 M L.J 599 L R. 70 I A. 232
3. A I R 1937 Bom 279
4. (1938) 43 Mys. H C.R. 438.

If one ponders a little as to the necessity of changing the law by overruling the majority view in *Balu Sakharam's case*[1] one would be hard put to find a valid reason What was the necessity for the change? Could it not have been left good at best for Bombay? Could not the people of that Presidency have continued to practise what they were practising from decades—till 1943 A scrutiny of the reasons given by the Privy Council and latterly others would give us the reasons that an adoption relates to the death of the adoptive father and the effect of Riktha Pinda and Gothra should be simultaneous, the religious efficacy could not be from one date and the more secular from a later date, that it would work a hardship on the adopted son who gives up his natural family and comes to another family; that as observed by Hindu Law Reform Committee in Mysore (1949) 'the theory that an adopted son is in the same position as a posthumous son of the adoptive father should be carried to its logical conclusion' If these reasons are weighty enough then the consideration that found favour with Rangnekar, J., could not be respected and one should not hesitate to swear by Viscount Simon, L C, who observed in *Fibrosa* v. *Fairbairu, etc, Ltd*, 'If the view which hitherto prevailed in this matter is found to be based on a misapprehension of legal principles, it is of great importance that this principle should be correctly defined, for, if not there is a danger that the error may spread in other directions, and a portion of our law be erected on a false foundation'

If one traces the history of adoption one finds very interesting and important aspects of it Golap Chandra Sarkar Shastri in his Tagore Law Lectures on adoption, Second Edition, observed "on a careful consideration of the different descriptions of sons recognised in primitive times, no one can fail to be struck with the idea that the general principle underlying the relation of father and son and of husband and wife is the notion of one being the property of another" At page 113 he has stated "I have shown to you that originally the motive for recognition of the various kinds of sons was entirely a secular one, and quite unconnected with religion; the exigencies of the unsettled state of society, and of the patriarchal form of Government raised the importance of sons in the earlier times when they were regarded 'as arrows in the hand of a mighty man,' and 'happy was the man who had his quiver full of them' This requirement of ancient society, as well as the enjoyment accorded by ancient law to a father of unlimited power over his wives and children, well-known as *Patria potestas*, furnished the motive for hankering after sons And this motive joined to the early conception of marriage relations to the practice of Polygamy and to the looseness of sexual morality, gave rise to the different usages to which the diverse descriptions of subsidiary sons owed their existence . . I have already explained to you, what the policy of their legislation was, and how they intended to suppress the usages in the progress of time by introducing and thrusting into prominence the doctrine of spiritual benefit, which is erroneously supposed to be the foundation of the law of adoption, but which on closer examination is found to be favourable to the aurasa or real legitimate son alone, and to be directed against adoption itself There remains to be considered another secular motive for having a son, namely, that he should be the support of the father in his old age and the protector of his wives after his death"

John D Mayne (8th Edition) in his treatise on Hindu Law observes "the fact is that the law of adoption as at present administered, is a purely modern development from a very few old texts" In another place he says "It must not be supposed that the religious motive for adoption ever excluded the secular motive The spiritual theory operated strongly upon the Shastries who invented the rule; but those who followed them were, in all probability, generally unconscious of any other aim than that of securing an heir, on whom to lavish the family affection which is so strong among Hindus The propriety of this motive was admitted by the Sanskrit writers themselves"

1. A.I.R 1937 Bom. 279

The above extracts point out that after all the spiritual benefit theory is a later introduction Even to this day in Pubjab there are agricultural classes among whom adoption is purely a secular institution. The form of adoption prevalent among them is described as an 'appointment of an heir' The main purpose was a secular one Mayne has emphasized this aspect by observing "Paupers have souls to be saved, but they are not in the habit of adopting" In another place again he has said "And our tribunals gravely weigh the amount of religious conviction present to the minds of persons, not one of whom probably connects the idea of religion with the act of adoption, more than with that of procreation".

As regards the 'gotra' Sri K B Gajendra Gadhar of Satara in his article published in the All India Reporter has pointed out that it does not go back to a period earlier than 600 B C Thus the notions of gotra and the spiritual benefits are of later origin It is an improvement on the old ideas The later and more civilised ideas have been allowed by the later writers to have play. So much so their texts are partly ancient practices, partly what was obtaining around their authors and partly what the authors intended their society should be While adverting to obstructed and unobstructed heritage the report of the Hindu Law Reform Committee, Mysore, has extracted the following from Vira Mitrodaya of Mitra Misra —"The Smriti texts relating to Law are but the repetitions of what prevails among the people, this has been so said by all the writers of treatises"

In this stand it is suggested that the ancient texts should not be given undue prominence Just as they did we must take the best of them and graft on them what we consider best for us and allow the law to grow and not draw back our advanced society to the frame work of previous ages. In this connection it is apposite to extract the following from Gopalachand Sankar Sastri in his treatise on adoption

"But it must be remembered that the law by which the Hindus are now governed is contained in the ancient codes, embodying usages shaped by the exigencies of early society and is substantially the same as it was three thousand years ago, subject, however, to changes and modifications, which are very slight compared with the length of the period during which they have been brought about."

Our society has advanced and has become complicated. The previous codes as they are cannot work They have got to be adapted Though the material opinions have cited that the Riktha as well as Pinda should have simultaneous effect yet recognising as they have done the possibility of recognising dispositions of property prior to adoption as valid they have to that extent given effect only to Pinda and not Riktha Further a pauper may also adopt when there would be no property but only religious ceremonies to be performed I am dwelling on these at length to emphasize and point out that we need not be sticklers to the Shastras The rule that Gotra and Riktha should take effect simultaneously is not an inviolable principle, when we have not recognised Kshetraja sons, when in spite of the codes enjoining that women should be in perpetual tutelage we have liberalised and given them property rights, when there is also a move to give divorce rights the dissociating of Pinda and Riktha is not of any great importance If therefore we find that the consequence of the Privy Council decision is not happy and desirable we should not hesitate to appeal to the Legislature and respect Rangnekar, J, in his observation that a long prevailing rule should not be lightly upset It is also submitted that by such an innovation by putting back our law to what it was prior to the material decisions we will not be building our legal edifice on a false basis. But like the sages of the old we would be taking light from the past looking round ourselves and building an edifice that we feel is good for us.

The next reason given for justifying the divesting is that the adopted son is in the same position as the aurasa son A simple statement like this would not be sufficient The adopted son being one of the subsidiary sons cannot be in the same position as the aurasa son If in a case of adoption during the lifetime o

the adoptive father if the adoptive father begets a natural son then the adopted son would get but a fourth of what the natural son would get. The principle therefore should be that *as far as possible* the adopted son should be placed in much the same position as the aurasa son In this view if it is that the adopted son gets by adoption only the rights to confer spiritual benefits and not to divest the property already vested in others the position is not revolting and does not call for being set right

The other reason that it would work a hardship on the adopted boy may be best allowed to remain as it is and be answered by the following discussion on the consequences of the change now brought about by the Privy Council decision

Having considered the absence of the justification for the change certain consequential aspects of the change itself may be considered The decision under advertance has allowed to the adopted son the right to get whatever property his adoptive father might have had and which might have passed on to some one else for want of a son to the holder The exercise of the rights of adoption being contingent and dependent on the whim of the widow may not come within a reasonable time. In cases where the adoption comes late the position of the intermediate possessor is peculiar He is the full owner till the contingency of adoption occurred His acts are protected. If he does not deal with it involving third parties but partitions it with other coparceners or being sole coparcener retains it himself, according to the decisions, the adopted son gets a right to take the property to which his adoptive father had a right The Courts have, as will be seen later considered it necessary that the intermediate owner should be allowed to deal with the property within his competence. They also have held that the persons dealing with the family would be protected. If so is not the altered position in law driving the person in possession to sell the entire property and retain cash which in the hands of that person cannot be followed according to the position to-day? Would not the present position of putting the others of the family at the mercy of the widow, who may threaten an adoption each time she may flare up, be cruel? Even if the person in possession does not alienate would he have heart to improve the property so long as there is a challenging widow alive? Would not this reluctance be in the way of the prosperity of the country?

The author of the article "Theory of relation back in adoption and prior surrender"[1] has given some support to the altered position in law While discussing if a surrender is an alienation has suggested that the divesting would be just when the property is within the family, when the disposition is for no consideration; and when there are no equities This line of argument no doubt has a slight basis in the observations in the Privy Council case of *Pratapsingh*[2] I would again suggest that it would be cruel to say that you would deprive a person of the property if he preserved it but allow the alienee undisturbed though the property might have been sold for a song The argument that the passing of the property if for no consideration could be disturbed is against Sarkar who gave 'gifts' the same strength as 'alienations' unless affection was considered sufficient consideration. If both the above justifications are put together it would mean that if the person in possession were to gift away a portion in favour of his daughter and a portion in favour of a third person the former would be set aside and not the latter Beyond thus laying bare the inconsistent and hard situations nothing more need be said

At this stage it is necessary to advert to certain other consequences of the decision of the Privy Council Of the two, the material decision is that of *Anant Bhikkappa* v *Shankar Ramachandra*[3] There it was held that the adoption would divest the property already vested in another. But later decisions in India began clarifying the position and pointing out that the divesting was subject to the rights of the third persons It is this that starts the mischief As to what saved the property from the mischief

1. (1949) 1 M L J 31. (Journal)
2 (1927) 53 M L J 57 L R. 54 I A. 248 · (P C). I.L R. 50 Mad 508 (P C)
3 (1943) 2 M L J 599 L R. 70 I.A. 232

of divestiture consequent on the adoption has been described differently. This limitation has been differently expressed by the several authorities. In *Harek Chand Babu* v. *Bejoy Chand Mahatab*[1], the limitation was called 'the act' the position being as he cannot dispute the previous *acts* of his adoptive mother unless they were in excess of her legal powers except as widow in possession. Nor can he question the *acts* of a previous male holder. (*Italics* mine) According to this decision what is not defeated by the adoption is the act of the previous owner. What that would be depends on the character of the owner. But what the act is remains to be decided upon Different interpretations may be given and contended. In *Bamundoss Mookerjea* v. *Mt Taranee*[2], it was held that the property that would be with the widow would devolve on the adopted son subject to *any alienations* made by her if they were for *strict necessity* There the word employed is "*alienations*" which is further hedged in by the condition that the same should be for strict necessity This would again mean the necessity for the intervention of the Court In *Sankaralingam Pillai* v *Velachami Pillai*[3] it was observed that the adoption "restores the position so far as the adopted son is concerned, subject to *lawful alienations* in the mean time" Now what are lawful alienations? Are those lawful alienations that a manager of a joint family is competent to make or are they what a father is competent to make? What is the standard that has to be adopted? The view taken by Mayne is as follows :—

'Where an adoption defeats the estate of a person who is lawfully in possession, such holder if a male has the ordinary powers of alienation of a Hindu proprietor' In the 8th Edition of Sarkar's Hindu Law, at page 217, it is stated : "So, if the sole coparcener, in spite of authority to adopt, given by his deceased coparcener to his widow, alienates all or any of the family properties absolutely, even by gift, the son adopted after the alienation cannot question it and the ordinary doctrine that adoption relates back to the date of the adoptive father's death does not apply to such cases" Sarkar goes a step further than Mayne and validates even gifts made with full knowledge of the power of the widow to adopt. But as Mayne has observed at page 278, (10th Edition) of His Hindu Law "it would be intolerable that (a person in possession) should be prevented from dealing with his own, on account of a contingency which may never happen."

In *Pratap Singh* v. *Agarsingh*[4], it was observed "It may be that if a Hindu widow lies by for a considerable time and makes no adoption, and the property comes into the possession of some one who would take it in the absence of a son natural or adopted and such person were to create *rights* in such property within *his competence* and whilst in possession, in such a case, totally different considerations would arise" (*Italics* mine) Here the words used are "rights . . . within his competence" To describe a similar act the word used in *Krishnamurthi Ayyar* v *Krishnamurthi Ayyar*[5], is "*disposition*" There it was observed as follows :— "When disposition is made *inter vivos* by one who has full power over property under which a portion of the property is carried away it is clear that no right of a son who is subsequently adopted can affect that property which is disposed of.

Thus, it is seen that the limitation for divesting is said to be "*the alienation*," "*disposition*" or "*the act*" of the person in possession or "*the rights*" created by the person in possession Even where the word employed is "*alienation*" it is differently adverted to in different places In some places it is said to be simple "*alienation*" in others "*valid alienation*". In these differences what it is exactly that does not bring about a divestiture cannot be said with any definiteness. Further what constitutes an alienation itself becomes a controvertible subject. Surrender is an act that may be resorted to by a Hindu widow. Whether a surrender amounts to an alienation and whether it is protected from being interfered

1. (1905) 9 C.W N 795.
2. (1858) 7 M I A 169
3. (1942) 2 M.L.J 678. I.L R. 1943 Mad. 309 (F.B.).
4. (1918) 36 M L J 571 : L R 46 I A. 97 : I L R 43 Bom 778 (P C)
5. (1927) 53 M.L J 57 : L R 54 I.A. 248 : I.L.R. 59 Mad, 508 (525) (P.C.).

with by the subsequently adopted son was the subject of an article contributed by *Sri S Venkata Ramanan*[1]

In this article the author has proceeded on the assumption that the divesting is subject only to alienations. He has argued that surrender is not an alienation and hence surrender does not prevent divestiture. The author at one stage states as follows —" Even assuming that a surrender may be regarded as an alienation still it is apparent that all alienations do not and cannot stand on the same footing for purposes of the relation back of the rights of adoption " In this observation of the learned author the question arises as to what is the sort of alienations that would prevent the divestiture

Thus, as a consequence of the Privy Council decision there is a limit for the divestiture. But what it is is differently stated as observed above and even if it is held that what is intended to prevent divesting is alienation even then a question arises as to what are those alienations, whether a particular act is an alienation? Then, the question as to whether it is a valid or competent alienation arises This would lead to the finding of what are the tests for stamping an alienation as valid or competent Should we follow Mayne or Sirkar At this stage I may venture to submit that the change has no merit but is pregnant with possibilities of endless litigation—unhappy litigations, coming as they may after decades and decades when evidence might have faded affording a good ground for purgery. Here the following from Mayne, (10th Edition, page 199,) may be extracted with advantage " . . While an adoption in itself may be a proper act inspired in many cases by religious motives, Courts are concerned with an adoption only as the exercise of legal rights by the widow and not as the fulfilment by her of a religious duty, and that the limits to the exercise of her power should be set not from the religious point of view but from the point of view of conflicting rights " This was said before the Privy Council case in 1943 Yet the wisdom of the observation is good even against the later decisions as it is hoped would be borne out from the discussion made above In this stand if it may not lie with me to canvass a change over in law to the previous position can I not move for a limitation on this power and for the avoidance of the dangers pointed out by Ghani, J , in *Dasappa* v *Seshagiri Rao*[2] where he observed " If divesting of an estate is not recognised as a limit to the authority to adopt and other restrictions now existing on the authority are removed, the property of a Hindu family cannot be dealt with to convey good title so long as there is some widow alive in the family " The need for such a limitation has also been felt by their Lordships of the Privy Council In *Amarendra Man Singh* v. *Sanatan Singh*[3], their Lordships observed " The Hindu Law itself sets no limit to the exercise of the power during the lifetime of the donee and the validity of successive adoptions in continuance of the line is now well recognised nor do the authoritative texts appear to limit the exercise of the power by any considerations of property But there *must be some limit to its exercise*, or at all events some conditions in which it would be either contrary to the spirit of the Hindu doctrine to admit its continuance or inequitable in the face of other rights to allow it to take effect has long been recognised both by the Courts in India and by this Board " Because of the difficulty as to where the limit should be drawn, protection was given to the transferees of property but it is suggested that it is possible to draw a line of limitation on the powers of the widow to adopt It is the belief prevalent among Hindus that a person who has no sons has no salvation but there is no compelling force for the widow to make an adoption A widow may not exercise her right to adopt on various grounds or she may exercise at a late or early stage If so can she not be compelled to adopt within a particular time on pain of losing her right to adopt? The question would be as to where should be the time limit The Hindu Law Reform Committee in Mysore has proposed a period of 12 years to re-open a partition, perhaps, because of claims to immovable property. I would submit that this period being too long would not suit the case on hand as in the case of claims to

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1 (1949) 1 M L J 31 (Journal).
2. (1938) 43 Mys H.C.R. 438.
3 (1933) 65 M L J 203 : L.R. 60 I.A. 242 : I.L.R. 12 Pat. 642 (P.C.).

to set aside alienations and for possession of immovable properties the existence of the person who may challenge in future and also such other factors as may give a right will be known fairly but in the case of divestiture consequent on adoption the coming into existence of the person is in itself contingent on the whim of the adopting mother. A further shorter period is prescribed for upsetting certain other alienations but no reasons are given for the same Whatever the period it is sufficiently long to dissociate Riktha and Pinda and negative the theory on which the two Privy Council decisions proceeded But consistent with the spiritual benefit theory and avoidance of the apprehended trouble we can find a limitation in what Amir Ali, J , observed in *Pratapsingh's case* [1] There it was observed " here the adoption was not made within the period of natural gestation and the property was at the time of the adoption in the possession of the widow and still is in the possession of the adopted son " The above was on the facts of the case yet the ' period of gestation ' referred to may be taken as the period within which a widow may have to adopt, the period starting from the death of the person to whom the adoption is to be made. It is not too short a period, on the anology of a son *en Ventre Sa mere*, the property can also await future disposition. If perchance the widow is not able to adopt within that time she should forego the right, the result would not be anything more than what would have been had she not exercised the right. On the other hand the advantages are many By putting this limitation one will not be running counter to the Privy Council decision and the theory that Riktha and Pinda should go together will also have been respected More than all there will not be any cruel treatment of a person in whom the property may have vested Neither will one be driving the person in intermediate possession of property to commit fraud by selling it and retaining the proceeds thereof The series of litigations that are sure to crop up would be almost obviated The possibility of parties purgering themselves while giving evidence as to the existence or otherwise of the power to adopt will also be minimised The position renders it possible for one who may intend to deal with the joint family property to visualise a situation into which he would be letting himself in There would be no gambling about it The situation could be sized up If at all there would be any difficulty it is a waiting during the period of natural gestation a period during which one will have to wait even in the case of a person *en Ventre Sa mere*

Since the power of the widow exhausts only when there is an adoption and that person begets a son or leaves a widow competent in the way of law to beget a child by adoption it may be necessary that this limitation should be there not only for the first time she adopts but during each time she has power to exercise the authority, the period of limitation starting from the date of revival of the power of the widow to adopt

I have suggested this limitation on the assumption that Legislature may not set at naught the Privy Council decision of 1943 But the Hindu Law Code that is to come before the Dominion Legislature has by its section 68 visualized a divesting of only such properties as vests on the date of adoption in the adoptive mother and nothing more This virtually puts back the law to somewhat what it was before the Privy Council decision of 1943 I feel my discussion made above lends every support to the proposed change and its value

If the proposed change in the Dominion gets support by this discussion or if that is not accepted if it converts the material persons to impose a time limit equivalent to the period of natural gestation I would feel my efforts to have been fruitful.

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1. (1927) 53 M L J 57 : L.R. 54 I.A 248 : I.L.R. 50 Mad. 508 (P.C.).

VALUATION OF LIFE AND LIMITED ESTATES

By

S ACHANNAPANTULU, B A. (HONS), B L , *Vakil, Kakinada*

The question of valuation of life and limited estates in properties is of considerable importance in assessing the values of the "Subject-matter in dispute" for purposes of court-fee and jurisdiction in declaratory suits for increase or reduction of maintenance and in suits for recovery of possession of estates by or of life and limited estate owners. In cases of increase or reduction in maintenance and its total denial, a distinction is also drawn between valuation for purposes of court-fee and for jurisdiction, the court-fees being fixed one, payable under schedule II, article 17-A or 17-B In the other class of suits, no such distinction is drawn and in those other cases, court-fees are payable under section 7 of the Court-Fees Act on the valuations computed for purposes of jurisdiction

In all cases where a distinction is drawn between valuations for purposes of court-fee and for jurisdiction the latter valuation has also to be mentioned because it involves substantial rights of appeal, etc , and as it decides the forum of institution of suit as well For instance, where the rate of maintenances is only Rs 500 per annum, the value for the purposes of jurisdiction of a suit for its reduction may be more than Rs. 10,000 and in such a case the suit would lie in a Subordinate Judge's Court, appeal to the High Court and a further appeal to Federal Court (or Supreme Court)

VALUATION FOR COURT-FEE

In suits for fixation and recovery of maintenance section 7 (ii) of the Court-Fees Act (as amended by Madras Amending Act) applies and this class of cases offers no difficulty In cases of increase or reduction in maintenance however, schedule II, article 17-B of the Act applies and the difficulty arises in computing the subject-matter of the suit for jurisdiction, etc , (Vide *Rajammal* v *Thyagaraja Aiyar*[1]). If the suit is for a declaration that the plaintiff is not bound to pay maintenance at all, schedule II, article 17-A, will apply and the value for purposes of Jurisdiction would seem, applying the parity of reasoning in *Rajammal* v. *Thyagaraja Aiyar*[1], to be arrived at as for reduction of maintenance with the entirety of maintenance as the amount for reduction.

As regards other cases the valuation for purposes of jurisdiction as computed as herein stated, is the basis for computation for court-fees as under the Suits Valuation Act and section 7 (v) of the Court-fees Act, subject to this qualification that no more court-fee than that on the market value of the property involved need be paid, in any view

VALUATION FOR JURISDICTION

The method of valuation for purposes of jurisdiction is the same in all cases of reduction of maintenance and also where life and limited estates are concerned. The principles of valuation of such estates are stated in *Rajammal* v. *Thyagaraja Aiyar*[1] which was a suit for reduction of maintenance. In computing the value for jurisdiction, Venkata Subbarao, J , adopted a scientific basis therein. The widow in that case was 33 years old at the time of the suit and the reduction sought was at the rate of Rs. 500 per year for the rest of her life. It was held that the value of relief for purposes of jurisdiction was the value of the benefit the plaintiffs sought to obtain by filing the suit and in this connection *Rachappa Subrao* v *Shidappa Venkatrao*[2], *Rattayya* v *Brahmayya*[3] and *Vasireddi Veeramma* v. *Butchayya*[4] were referred to. Venkata Subbarao, J , observed

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1. (1935) 69 M L J 202 See Court-Fees Act by B V Viswanatha Iyer, (3rd Edition, at pp. 85 and 837 for comments on this decision

2. (1918) 36 M.L.J. 431 : L.R. 46 I.A. 24 . I L R 43 Bom 507 (P C)

3 (1925) 49 M L J. 309.

4 (1926) 52 M L J 381 . I.L R 50 Mad, 646.

"The solution may be sought in the mortality tables constructed for life assurance purposes In the case of Indian lives, the Government Actuary's report on the rate of Mortality in India, dated 1920, contains the following passage,

"It is recommended that for the general body of Indian lives assured after medical examination for whole life with profits, the ultimate mortality should be represented by a standard table with a constant addition to the age, (Eg. + 7 for O M (5) plus 6½ for H (M) or plus 6 for H (M) (5). Life Assurance Text Book by Simmonds & Hooker, 1929 Edition, page 150".

The standard table adopted by His Lordship is at page 127 of the Journal of the Institute of Actuaries, Volume 44, part 2, April, 1910 This passage, therefore, gives the method of valuation of such estates

The Full table referred to herein is set down below

"Journal of the Institute of Actuaries,

Vol 44, part 2, April, 1910

Page 126, para 54, Expectations of life,

"Turning now to the cumulative effect of the mortality as shown by the expectations of life, it is thought that a sufficient comparison is afforded by table N, wherein the values of the curtate expectations of life are set out for quinquennial ages

P 127. On the mortality of female assured lives, etc

TABLES N

Comparison between curtate expectations of life by various mortality tables :

X	H^m	H^f	O^m	O^f	$O^{(m-5)}$	$O^{(f-5)}$	X
20	41 561	40 315	43 182	42 527	42 387	42 093	20
25	37 905	36 909	39 083	38 782	38 745	38 212	25
30	34 181	34 003	35 067	35 249	35 070	34 833	30
35	30 516	30 945	31 159	31 764	31 388	31 647	35
40	26 899	27 753	27 360	28 293	27 736	28 327	40
45	23 292	24 487	23 668	24 799	24 155	24 847	45
50	19 806	21 116	20 107	21 210	20 696	21 402	50
55	16 462	17 692	16 722	17 709	17 419	17 955	55
60	13 330	14 351	13 571	14 371	14 380	14 732	60
65	10 512	11 272	10 716	11 262	11 630	11 720	65
70	7 995	8 582	8.208	8 524			70
75	5 876	6 425	6 079	6 197			75
80	4 219	4 950	4 337	4 377			80

In this table H^m means Healthy males, H^f-healthy females, O indicates table derived from British Offices experience, O (5) indicates truncated table, $O^{(m-5)}$

stands for truncated aggregate table excluding the first 5 years of assurance on male lives (Pages 70 & 71, of Life Assurance Text Book Simmonds & Hooker) "

In the case of the widows of 33 years as in *Rajammal* v *Thyagaraja Aiyar*[1], the expectation of life of such a person is, having regard to the extract above quoted from Simmonds & Hooker about that of the standard table "N" for an age 7 years older i e, for an age 40 The age of expectation of a female 40 years old is given as 28 293, i e, the figure in column O*f* for age 40 Similarly, if the present age of a female is say 60 years, the age of expectation of her life is arrived at by adding 7 to her present age (60 plus 7=67), and then, ascertaining the corresponding figure for 67 in the col O*f* The required age will be between 11 262 for 65 years and 8.524 for 70 years, which has to be arrived at by means of a simple arithmetical process as follows. Since 67 exceed 65 by 2 years the expectation for these 2 years will be 2/5th difference, i e, 2/5th of 2 738=1 0952 years This has to be deducted from 11 262 Thus the expectation of the life of a female 60 years old would be 10 1668. Ages of expectations of females or other limited estates holders of various ages can be ascertained by means of similar calculations

Having ascertained the age of expectation of lives of females or limited estate holders by means of calculations as set forth above, the present values of the estates of such life or limited estates have to be next ascertained. This process is also indicated in the same judgment in *Rajammal Thyagaraja Aiyar*[1]. " In other words, the plaintiffs, if they succeed in obtaining the decree they seek, will be saved thirty (the age of expectation of the widow in that case being assessed at 28 293, i e, approximately 30, as per the method of calculations set forth above) payments of Rs 500 each ; (Rs. 500 being the amount of annual reduction) it is the present value of the thirty future payments spread over thirty years that has to be ascertained . the commuted value on any computation (that is to say whatever the rate of interest adopted from 3 per cent is) is much over Rs 5,000 " Thus the present value of so many future payments spread over this number of years ascertained by the methods above indicated, has, thus, to be next ascertained.

The commuted value of an annuity for any number of years is easily ascertainable from any text book on Higher Algebra dealing with interest and annuities This commuted value is known as the present value of an annuity to continue for a given number of years, allowing compound interest and is the well-known formula,

$$V = A \times \frac{1 - R^{-N}}{R - 1} \quad \text{Where } V = \text{present value}$$

$$A = \text{Annuity}$$

$$R = 1 + \frac{r}{100}, \qquad r = \text{Rate \%}$$

$$N = \text{Number of years}$$

Vide p 204, Hall and Knight, Higher Algebra If the problem is to ascertain the value of the life interest of a widow 60 years old, in the property fetching an annual income of say Rs 100, the calculations will be as follows.

The age of expectation of the life of that widow 60 years old is 10 1668 years as calculated, *supra*, i e, roughly 10 years Then substituting Rs. 100 for *A*, 10 for

1 (1935) 69 M.L.J. 202.

n and 3 for r (at 3 per cent compound interest) the formula will be

$$\text{The present value } V = 100 \times \frac{1-(1+3/100)^{-10}}{(1+3/100)-1}$$

$$= 100 \times \frac{1-(1.03)^{-10}}{1\ 03-1}$$

$$= 100 \times \frac{1-1/(1\ 03)^{10}}{03} = 100 \times \frac{1-\frac{1}{(1\ 03)^{10}}}{03.}$$

These figures can be easily worked out by means of logarithms or by ordinary process

$$= 100 \times \frac{1-\frac{1}{1\ 343}}{.03}$$

$$= 100 \times \frac{1-(0\ 752)}{03} = 100 \times \frac{248}{03}$$

$$= \frac{2480}{3} = \text{Rs } 826\text{-}10\text{-}8$$

That is, the value of the life estate of a widow 60 years of age in property fetching Rs. 100 a year, is the amount of Rs 826-10-8, which means the amount that has to be deposited to-day with a banker, so that the banker would, for 10 years, give Rs 100 to the widow without any further reference to you By the process of calculations above set forth, the values of the life or limited estates can be easily ascertained, so that that banker might make regular payments at Rs 100 each for 10 years (The Banker has allowed for compound interest at 3 per cent per annum But if the banker allows only for a lesser rate say 2 per cent, the figure 3 in the above calculation has to be substituted by 2 and so on)

BOOK REVIEW.

The Law of Conveyancing in British India, by S K Dutt, Advocate, High Court of Allahabad Second Edition Published by the Universal Law House, Allahabad Pages 796. Price Rs 25 or £2-15*s*. nett

A great deal of trouble and expense can be avoided if parties would only get their legal documents drawn by people who are skilled in drafting them Such skill is necessarily the result of a long course of training The book under review is not a mere compilation of forms Practical hints are given in the opening Chapter and after dealing with the formal parts of deeds, the principles of the law in relation to the deeds, namely contracts, mortgages, leases, partitions, partnerships and companies are shortly given and followed up the specimen and typical forms. This enables the reader to realise the legal and formal incidents of a transaction and to choose the most appropriate form to suit particular cases The necessary information in regard to Stamp and Registration is also given in the appendices. It is a necessary and useful addition to any lawyer's library

country he lived in and the law by which he is governed and not by importing principles of law enunciated in English cases

The intention of the testator was that the property should be taken by each of the four groups consisting of such of his sons as were alive and their respective descendants of each of them as well as the son of the predeceased son

G C Venkatasubba Rao and *Ch Suryanarayana Rao* for Appellants

A Sambasiva Rao for Respondents.

K S —————— *Appeal dismissed No leave.*

Govinda Menon J Sattayya Chetty *v* Venkataramanayya.

8th April, 1949 S A No 928 of 1946

Practice—Suit filed with proper vakalat in the Subordinate Judge's Court having jurisdiction though it was not the lowest Court having pecuniary jurisdiction—Return of plaint but not of the vakalat and re-presentation to Munsiff's Court—Original vakalat if sufficient—Proceedings in Munsiff's Court if continuation of the proceedings in the Subordinate Judge's Court—Presentation without filing vakalat—Effect

A plaint was presented in the Court of the Subordinate Judge with a proper vakalat and the suit was numbered in the usual course The defendant who appeared contested that the suit had been overvalued for the purpose of pecuniary jurisdiction The Judge appointed a commissioner to value the properties and he found that the suit was of the value of below Rs 3,000 Thereupon the Subordinate Judge directed the return of the plaint which was taken back and immediately re-presented in the Munsiff's Court but as there was no direction to return the vakalat filed in the sub-Court it was not taken back and when the plaint was filed before the District Munsiff, no vakalat was filed After evidence had been let in and in the course of arguments it was pointed out by the defence that the suit should be dismissed as no vakalat had been filed by the plaintiff when the plaint was re-presented to the Munsiff's Court The District Munsiff dismissed the suit on that ground On appeal the Subordinate Judge during the course of the appeal admitted the original vakalat which was all along lying in his own Court as additional evidence. The Subordinate Judge held that the proceedings before the Munsiff must be deemed to be new proceedings and in the absence of a proper vakalat the suit was properly dismissed On Second Appeal,

Held, the presentation of the plaint in the first instance to the Subordinate Judge's Court was to a Court having jurisdiction and there was no initial defect of jurisdiction as regards the original proceedings The retention of the vakalat in the Subordinate Judge's Court would not in any way detract from the fact that when the plaint was subsequently presented in the District Munsiff's Court, it was a continuation of the suit that had been originally instituted and the existence of the vakalat being proved, the suit ought not to have been dismissed on the technical ground

Moreover when once the lower appellate Court admitted the vakalat as additional evidence in appeal it should be deemed to be as if the vakalat was in existence even in the trial Court.

There is no provision in the Civil Procedure Code or in the Rules of Practice making it obligatory that along with the presentation of the plaint *eo instanti* a vakalat also should be filed If the Court is convinced that at the time the plaint was presented the pleader had *in his possession or power* a properly executed and attested vakalat, then the Court is entitled to come to the conclusion that though there was some irregularity in the procedure adopted it is a matter which can be cured under section 151, Civil Procedure Code What is essential is the existence of the power in the possession or power of the person who acts

T. V R Tatachari for Appellant

B C Seshachalam Aiyar for Respondent

K S. —————— *Suit remaned to the trial Court to be tried afresh. No leave.*

Horwill, J. Herbert Richard Farington *v.* Munisami.
8th April, 1949. C. R. P. No. 849 of 1947.

Tort—Owner of land laying traps to catch trespassing pigs which damaged his potato crop—Neighbour's cow straying into field falling into trap and getting killed—Owner of land if liable

In order to protect his potato crop from trespassing pigs the defendant laid traps and left some openings in the hedge near the traps Plaintiff's cow strayed into the land and fell into the trap and was killed In a claim for damages,

Held, the owner of the property will not be liable in damages to the owner of the trespassing animal for injury to the animal merely because he had taken no precautions to protect the trespassing animal against injury. It cannot be said that the defendant lured the cow into the trap, and therefore liable

K. R Krishnaswami Aiyar and *S P Subrahmanyam* for Petitioner

O T. G. Nambiar and *V. K Ramanathan* instructed by *Messrs King and Partridge* for Respondent

K S ——— *Petition dismissed.*

Raghava Rao, J. Sarabhanna *v* Veeranna.
8th April, 1949. C R P. No 1256 of 1947.

Civil Procedure Code (V of 1908), *Order* 47, *rule* 10—*Re-presentation of plaint to proper Court—Court-fee stamp cancelled by Court returning plaint—When to be given credit to.*

Where a Court after receiving a plaint and cancelling the stamp affixed thereto returns the plaint for presentation to the proper Court under Order 7, rule 10, Civil Procedure Code, the latter Court to which the plaint is presented is bound to give credit for the fee already levied by the former Court

I.L R. 35 Mad 567 : 21 M L J. 533 (F B), referred to

But to entitle the plaintiff to such credit the plaint returned and the plaint re-presented to the proper Court must substantially if not *verbatim et literatum* be the same.

V. Suryanarayana for Petitioner

Respondent not represented.

K S. ——— *Petition dismissed.*

Panchapakesa Aiyar, J Brahmayya *v.* Krishnamurthi.
8th April, 1949 A A A O No 103 of 1947.

Hindu Law—Father's debts—Son's liability under pious obligation—Decree against son three days after adjudication of father as insolvent—Subsequent discharge of father—Effect on liability of the son

A decree against a son based only on his pious obligation passed three days after the adjudication of the father as insolvent cannot be enforced against the son after the father had been discharged, as the discharge of the father from the debt extinguished the debt which cannot therefore survive for the purpose of binding the son alone If the father's obligation goes, the son's pious obligation also goes It can make no difference whether a decree *eo nomine* is obtained or not against the son.

K. Bhimasankaram for Appellant

B. V. Ramanarasu and *T V R Tatachari* for Respondent

K.S. ——— *Appeal dismissed Leave granted.*

Panchapakesa Aiyar, J. Abdul Rahim *v* Muhammad Ibrahim.
8th April, 1949 A A A O No 81 of 1947.

Civil Procedure Code (V of 1908), *Order* 21, *rule* 11 *and Civil Rules of Practice, rule* 142 *—Unnumbered execution petition not accompanied by copy of decree—If one in accordance with law—Limitation Act (IX of* 1908), *Article* 182 (5)—*Rejection of unnumbered petition —If "final order" saving limitation*

Rule 142 of the Civil Rules of Practice will not supersede Order 21, rule 11 (2) and (3). An unnumbered execution petition though not accompanied by a copy of the decree as required by the provisions of rule 142, of the Civil Rules of Practice

will still be one "made in accordance with law" and an order "rejecting" it will be a "final order" which will save limitation for execution of the decree.

R. Kesava Aiyangar for Appellant

T. R Srinivasan and *S. Gopalaratnam* for Respondent.

K S. —————— *Appeal dismissed* *Leave granted*

Rajamannar, C J. and *Balakrishna Aiyar, J* Rama Gounder *v* Sinnakkaliakkal
11th April, 1949 S A Nos 1825 of 1945 and 429 of 1946.

Hindu Law—Widow—Compromise decree—When binds reversioners—Tests

When a Court is called upon to decide whether a compromise entered into by a Hindu widow in a suit is binding on the reversioners, it is generally useful to enquire What was the nature of the claim in the suit? What was the defence put forward? What prospect was there of proving the claim in the suit or overcoming the defence set up? And finally what was the nature of the arrangement eventually come to? Was it such that a provident and prudent person mindful of the interests of the reversioners also would have agreed to? Where two widows went to Court on the footing that their husbands had divided, and accepting the defence of another widow denying falsely the partition, agreed to a compromise (getting a little maintenance for themselves and some stridhanam for the daughter of one of them) that compromise will not bind the reversioners as the compromise in effect involved a total abandonment of the claims of the reversioners.

(Case-law reviewed)

K. Bhashyam Aiyangar, The Advocate-General (*K Rajah Aiyar*), *N Sivaramakrishna Aiyar* and *T S Venkatarama Aiyar* for Appellants in S A No 1825 of 1945

Sir Alladi Krishnaswami Aiyar, S Rajaraman and *M R Narayanaswami* for Respondent in S A No 1825 of 1945

The Advocate-General (*K Rajah Aiyar*), *N Sivaramakrishna Aiyar, T S Venkatarama Aiyar* and *T. R Srinivasam* for Appellants in S. A No 429 of 1946

Sir Alladi Krishnaswami Aiyar, M. R Narayanaswami, K V Ramachandra Aiyar and *T. S Venkatarama Aiyar* for Respondents in S A No 429 of 1946

K.S. —————— *S A No* 1825 *of* 1945, *dismissed and S A No* 429 *of* 1946, *allowed in part.*

Rajamannar, C J and *Balakrishna Aiyar, J* Kuppuswami *v* Gopal Nair
12th April, 1949 C M P No 2757 of 1949

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *section* 7 (3)*—Landlord requiring premises for occupation of himself and his family and also for the use of his servants or employees—Right to relief.*

There is nothing in the Rent Control Act to justify refusal of relief to a landlord simply because he wants his own building for the occupation of himself and his family and also for the use of his servants or employees The fact that the landlord is in occupation of the upstairs of the building where he is running a hotel cannot mean that he is occupying a residential building to enable the tenant of the downstairs to resist eviction on the ground that the landlord requires the premises for his occupation.

P. K Janakiraman and *S Krishnamachariar* for Petitioner

M C. Sridharan for 2nd Respondent

K S —————— *Petition dismissed*

Yahya Ali and *Govinda Menon, JJ* Merchant *v* Bank of Mysore, Ltd
12th April, 1949. C M P No 2900 of 1949

Civil Procedure Code (V of 1908), *section* 109 (c)*—Question whether section* 7 *of Madras Act XV of* 1946 *had the effect of repealing section* 111 *and other material provisions of the Transfer of Property Act—Is of wide "public importance" and leave to appeal to the Federal Court must be granted*

The question, whether before an eviction under section 7 (1) of Madras Act XV of 1946 there should have been an antecedent determination of the tenancy, in the manner provided under the general law of landlord and tenant (Transfer

of Property Act, section 111 and other material provisions), is of far-reaching and wide public importance and leave to appeal to the Federal Court has to be given

V V. Srinivasa Aiyangar and *A Nagarajan* for the Petitioner

M A Rajagopalan and *N Parthasarathy* for Respondent

K S ——— *Petition allowed*

Rajagopalan, J Achutha Kurup *v* Patikayil Mathu

12th April, 1949 A A A O No 157 of 1947

Malabar Tenancy Act (XIV of 1930), *section* 25—*Renewal of* kanom—*Application for after diminution in area—If sustainable*

Where, by operation of section 34 of the Malabar Tenancy Act, *kudiyiruppu* right is established to a portion of the *kanom* area, there is a diminution of the area to that extent and the benefit of section 25 of the Malabar Tenancy Act cannot be availed of

Section 25 (1) and (2) read with section 24 and section 17 of the Malabar Tenancy Act do not contemplate anything but a renewal of the original grant *minus* the terms obnoxious to law. If that cannot be achieved, whatever be the reason renewal as such is not permissible and apart from section 25 there is no basis for ordering a renewal by Court

V P Gopalan Nambiar for Appellant

C K Viswanatha Aiyar for Respondent

K S ——— *Appeal allowed Leave granted*

Mack, J Ganga Bhavanamma *v* Subbayya

12th April, 1949 C R P No 1361 of 1946

Civil Procedure Code (*V of* 1908), *Order* 47, *rule* 1—*Dismissal of pauper petition after its rejection because court-fee had not been paid in time—Review—Not maintainable—Order* 33—*Giving of time to pay court-fee—Propriety*

An order of dismissal of a pauper petition after its rejection because court-fee has not been paid in time despite several extensions is not one which can be brought within the scope of Order 47, rule 1 of the Civil Procedure Code

There is no statutory support for the practice which has grown up of giving pauper applicants after the rejection of their application to sue *in forma pauperis* time to pay court-fee and allowing them in fact to sue without first paying the costs of those opposing their pauper application The normal procedure contemplated by the Code is, when a petition is rejected, to leave the petitioner to his remedy under Order 33, rule 15, Civil Procedure Code

K Krishnamurthi for Petitioner

K Ramaseshayya for Respondent

K S ——— *Petition allowed*

Satyanarayana Rao and *Viswanatha Sastri, JJ* Parandamiah *v* Narasimha Rao

14th April, 1949 O S A No 67 of 1948

Companies Act (*VII of* 1913), *section* 235—*Scope—Misfeasance proceedings under—If can be ordered in the case of a company which is wound up voluntarily*

The language of section 235 of the Companies Act is general and applies to all the three modes of winding up of a company contemplated by section 155 of the Act (*viz*, by Court or voluntarily or subject to the supervision of the Court) Accordingly, the Court has power to initiate misfeasance proceedings even in the case of voluntary liquidation either against the managing director or a liquidator

Quaere Whether an order initiating such proceedings is appealable as a "judgment" within the meaning of clause 15 of the Letters Patent

Per Viswanatha Sastri, J —There is no justification for controlling or limiting the operation of section 235 by reference to section 216 of the Act

K. V Rangachari for Appellant

N Suryanarayana, *R Rajagopala Aiyar*, *K Krishnamurthi* and *G Suryanarayana* for Respondents

K S. ——— *Appeal dismissed.*

Subba Rao and *Panchapakesa Aiyar, JJ* Periakaruppan *v* Ramaswami
14th April, 1949 Appeal No 441 of 1947.

Trust—Charity—Dedication to—Facts sufficient to prove

The facts disclosed in the evidence were (1) *A* and *B* jointly purchased some properties (2) Both of them built a *matam* on the site purchased (3) The *matam* so constructed was described as " Sri Armuga Vilasa Madalaya " and the widow of *B* herself endowed additional properties to the *matam* for *annadhanam* charity and *A* actually carried on poor feeding in the building

Held, dedication of the *matam* to public charity, namely, poor feeding must be inferred from the facts

(1947) 1 M L J. 400, distinguished

A cannot claim to be the sole trustee and *B's* representative is jointly entitled to manage the *matam*

T Krishna Rao for Appellant

R Gopalaswami Aiyangar for Respondents

K S *Appeal allowed*

Mack, J Puthiya Velappil Ayissamma *v* Bavachi Koyi
14th April, 1949 C R P No 766 of 1948

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *sections* 12 (1) (b) and 7 (5)—*Vexatious and false petition to evict—Dismissal—Compensatory costs—If can be recovered by separate suit*

The word " landlord " in section 7 (5) of Madras Act XV of 1946, obviously means landlord or any one claiming to be a landlord making an application. Similarly the words " a tenant " can only mean " a tenant or any one alleged to be a tenant "

Section 7 (5) of Act XV of 1946 reproduces the principle of section 35-A of the Code of Civil Procedure in rent control proceedings If a petition was false and vexatious, compensatory costs can be granted But there is no legal principle on which such relief can be given to the party who was dragged unnecessarily into the proceedings by way of a separate suit for damages

M C Sridharan for Petitioner

C K Viswanatha Aiyar for Respondent

K S *Petition dismissed*

Rajamannar, C J and *Balakrishna Aiyar, J* Muni Samappa *v* Gurunanjappa
18th April, 1949 Appeal No 549 of 1945

Specific performance—Agreement to sell a house by a Hindu—Default—Suit for specific performance—Vendor's sons entitled to shares under Hindu law in the property—If ground for refusing specific performance of the agreement

Where a person sues for specific performance of an agreement to convey and simply impleads the party bound to carry out the agreement there is no necessity to determine the question of the vendor's title, and the fact that the title which the purchaser may acquire might be defeasible by a third party (for instance the sons of the vendor being entitled under Hindu Law to shares in the property) is no ground for refusing specific performance if the purchaser is willing to take such title as the vendor has

I L R 44 Mad 605 41 M L J 129 (F B), distinguished and the observations of Kumaraswami Sastri, J , at page 620, relied on

P Chandra Reddi and *O Chinnappa Reddi* for Appellant.

N Appu Rao, T K Subramania Pillai for *A C Sampath Aiyangar, G C Venkatasubba Rao* and *Ch Suryanarayana Rao* for Respondents

K S. *Appeal dismissed.*

Rajamannar, C J and *Balakrishna Aiyar, J.* Meyyappa Chettiar *v* Venkataraman
19th April, 1949 C. M P No 2152 of 1949.

Madras Buildings (Lease and Rent Control) Act (XV of 1946)—*Appellate authority allowing tenant's appeal on the ground that tenancy had not been terminated by proper notice to quit—Error apparent on the face of the record making the order liable to be quashed by writ of* certiorari

Where the appellate authority allowed the tenant's appeal on the ground that the tenancy had not been validly terminated by the issue of a proper notice to quit (relying upon a decision which was subsequently reversed in (1949) 1 M L J 412),

Held, there is an error apparent on the face of the record and the order of the appellate authority must be quashed The decisions (holding that the fact that an order based on a ruling which had been subsequently reversed would not be sufficient ground for granting a review) have no application to a case where the jurisdiction of a superior court is sought to quash the order of an inferior tribunal on the ground that it had made an apparent error of law

K. Krishnaswami Aiyangar and *N C Raghavachari* for Petitioner

A C S Chari for first Respondent

K S — *Order quashed*

Mack, J — Satagoparamanujacharyulu *v* Venkatarayudu
19th April, 1949 — S A No 2235 of 1946, *etc*

Madras Estates Land Act (I of 1908), *section* 3 (2) (d) (*as amended by Madras Act* II of 1945)—*Inam grant of named village* (Medupalli Agraharam) *excluding some poramboke—Is an "Estate"*

Though about 10 acres of land are shown as "poramboke including the village site"—*Medupalli Agraharam* is an estate within the meaning of section 3 (2) (*d*) of the Madras Estates Land Act (Case-law discussed)

M S Ramachandra Rao and *V Rangachari* for Appellant

P Somasundaram, P Suryanarayana, B V Ramanarasu, K Bhimasankaram and *I V Rangacharya* for Respondents

K S — *Appeal dismissed Leave refused Connected batch of C R Ps also dismissed*

Horwill and *Raghava Rao, JJ* — Viraraghava Rao *v.* Mothey Narasimha Rao
20*th April*, 1949 — C M. P No 2647 of 1947

Civil Procedure Code (V of 1908), *section* 110—*Variation of trial Court's decree by appellate Court in favour of the person who seeks to appeal to the Federal Court—Leave if can be granted*

The Full Bench decision in *Gangadhara* v. *Subramania*, I L R 1947 Mad 6 (1946) 2 M L J 69 (F B) has been wrongly understood by the Divisional Bench which decided *Lakshmanan* v *Thangam*, I L R 1947 Mad 744 (1946) 2 M L J 465, and the true view to take of the matter in the existing state of the case-law of the Madras High Court and with due regard to the Full Bench Ruling in I L R. 1947 Mad 6 · (1946) 2 M L J. 69 (F B) is that if *quo ad* the party seeking leave to appeal to the Federal Court the decree sought to be appealed against is not one of wholesale affirmance, it does not matter in what particular or to what extent the variation has taken place or whether the variation wholly or to the extent to which it has gone is in favour of the party seeking to appeal or against him In such a case so long as the statutory requirement of value of the subject-matter of the suit as well as of the proposed appeal, inclusive of course even of portions on which there has been concurrent findings against the party seeking leave to appeal, stands satisfied the party is entitled without showing that a substantial question of law is involved in the proposed appeal, to a certificate which cannot be limited by the exclusion of such portions of the subject-matter from its ambit.

In any event where there is no complete variance of the lower Court decree in favour of the appellant, the appellant is entitled to a certificate of fitness for appeal to the Federal Court

T Venkatadri and *K Ramachandra Rao* for Petitioner.

P. Somasundaram and *M Dwarkanath* for Respondents.

K.S. — *Petition allowed.*

Rajagopalan, J
20th April, 1949

Ranganatha Ayyar *v.* Sankara Pattar.
A A. A O No 37 of 1948.

Civil Procedure Code (*V of* 1908), *sections* 146, 151 *and Order* 22, *rule* 10—*Preliminary and final decree in favour of manager of joint family—Partition taking place in between the two dates—Subsequent right of divided coparcener to get himself recognised as person entitled to the decree and also to execute the decree on behalf of all the ex-coparceners*

Where a preliminary decree and final decree have been passed in favour of the *kartha* of a joint Hindu family but between the dates of the decrees there was a partition in the family, one of the divided coparceners can apply for recognition of his right to execute the decree on behalf of all the quondam coparceners. The principles that underlie section 146 and Order 22, rule 10, extended on the basis of section 151, Civil Procedure Code, furnish the legal basis for the recognition of the divided coparcener's right to execute the decree on behalf of all the real owners of that right, namely, the entire body of the quondam coparceners After his recognition by Court he will be entitled to execute the decree

C S Swaminathan for Appellant.

K Kuttikrishna Menon and *V Balakrishna Eradi* for Respondent

K S *Appeal allowed* · *Leave granted.*

Rajagopalan, J
21st April, 1949

Samu Vanniar *v* Nagaraja Moopanar.
S A No 847 of 1946

Madras Estates Land Act (*I of* 1908), *section* 3 (10) (b) (*iv*)—*Intention of landholder to retain the* kudivaram *in himself—Evidence indicative of.*

The absence of evidence that the landholder ever cultivated the land and even the absence of evidence that the landholder intended to cultivate the land himself are not sufficient to take the case outside the scope of section 3 (10) (*b*) (iv) of the Madras Estates Land Act, though personal cultivation was accepted as the *ordinary* test of deciding whether a land was private land

Lease for short periods with varying terms would really indicate a definite intention on the part of the landholder to retain his *kudivaram* interest, not that he intended to part with them in favour of the lessee The fact that the lessee was the same is not enough to prove an intention to part with the *kudivaram* interest

A. Swaminatha Aiyar for Appellant

G R Jagadisa Aiyar for Respondent

K S *Appeal dismissed* *Leave granted*

[F B]

Rajamannar, C J, *Viswanatha Sastri* and *Balakrishna Ayyar, JJ*
22nd April, 1949

Lakshminarasimhachaiyulu *v* Venkataraghavacharyulu.
C M P. Nos. 3751 to 3756 of 1947.

Civil Procedure Code (*V of* 1908), *Order* 45, *rule* 7—*Consolidation for purpose of appeal to Federal Court—Consolidation if available for purposes of furnishing security for costs and depositing printing charges*

The applicant or applicants who has or have been granted leave to file a consolidated appeal can be asked to furnish security for costs and deposit printing and translation charges only once for the consolidated appeal and not on each of the appeals *Ponnammal* v *Rajambu Ammal*, I L R. 1945 Mad 672 (1945) 1 M L J 73, disapproved It may be that having regard to the number of appeals consolidated and the number of respondents in the several appeals the Court may direct security for a sum in excess of Rs 4,000 So far as printing and other charges

N R C

are concerned, it is unreasonable that separate amounts should be directed to be deposited in each of the appeals which have been consolidated into one appeal Except in special cases one deposit would suffice

P Somasundaram and K Mangachari for Petitioner

P. Satyanarayana Raju for Respondents.

K S

Ruling accordingly.

Satyanarayana Rao, J
22nd April, 1949

Mathu Kutty *v* Varee Kutty.
A A O No 481 of 1947.

Arbitration Act (X of 1940), *sections* 32, 33 *and* 34—*Application under section* 34 *for stay of suit alleging existence of arbitration agreement—Opposite party contending that agreement was unenforceable by reason of fraud, collusion, etc —Court if can try the issue in the stay application or if it should be raised by way of an independent application under section* 33]

Where an application under section 34 of the Arbitration Act is made alleging that there is an arbitration agreement the existence of which bars the trial of the suit and when the respondent to such a petition raises the contention that the agreement is unenforceable by reason of fraud, undue influence or collusion or even misrepresentation, it is incumbent upon the Court to try the objection to the enforceability of the arbitration agreement in that proceeding itself and it is not at all obligatory on the part of the person raising such a defence to make an independent application under section 33 of the Arbitration Act

K Kuttikrishna Menon and D H Nambudripad for Appellant.

S Venkatachala Sastri and N Sundara Aiyar for Respondent

K S

Appeal allowed.

Govinda Menon, J
4th July, 1949

Bavaji, *In re.*
Cr R C No 297 of 1949.
(Crl R P No 250 of 1949).

Criminal Offence—Attempt to commit an offence—Ingredients essential to make offence punishable

In order to constitute an attempt to commit an offence there must first of all be an intention to commit the crime, a commencement of the commission and an act done towards the commission Neither the mere forming of the intention to commit the crime nor the mere preparation for an offence is punishable The dividing line between a mere preparation and an attempt to commit a crime may be rather thin in some cases and the question whether there has been an attempt or only a preparation to commit it is to be decided on the facts of each particular case One important consideration in such cases is whether there was a *locus penitentiae*

V. Rajagopalachari and G Gopalaswami for Petitioner

The Assistant Public Prosecutor (*A S Sivakaminathan*) on behalf of the Crown.

K S

Petition allowed and petitioner acquitted.

Rajamannar, C J. and *Mack, J.*
4th July, 1949.

Chathu Nair and another *v* Lelavathi Ammal. and another.
C M P No. 3770 of 1949.

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *section* 7 (2) (iii) *and* (ii)—*Acts of waste justifying eviction—Premises let for running a tea shop damaged by smoke from oven—Not damage as is referred to in sub-clause* (iii) *of section* 7 (2)—*Tenant running tea shop also vending other eatables made in the premises by his brother—Building if used for purpose other than that for which it was leased—Circumstances, if justify finding of sub-letting in favour of tenant's brother.*

Where the finding is merely that the premises let to a tenant for running a tea shop has been damaged by smoke from an oven used there and there is no finding that the damage is such as to impair materially the value or the utility of the premises, it cannot be said that the damage is such as is referred to in clause (*iii*) of section 7 (2) of the Madras Act XV of 1946

Running of a tea house also implies serving along with tea eatables like biscuits, etc , and would therefore include the making of such eatables. Where the tenant takes the assistance of his brother to prepare eatables to be served along with tea, it cannot be held in law that there are two businesses run by the two brothers separately It cannot therefore be said that either the building has been used for the purpose other than that for which it was leased or that there has been a sub-letting in favour of the brother of the tenant

A Swaminatha Aiyar for Petitioner

T R Ramachandra Aiyar for Respondent

V S

Order quashed.

Subba Rao and *Somasundaram, JJ.*
6th July, 1949

Mothey Anja Ratna Raja Kumar *v.* Koney Narayana Rao and others.
A S No 166 of 1946.

Hindu Law—Illegitimate sons—Maintenance—Principles governing right to and the quantum of

The maintenance awarded to an illegitimate son of a Hindu is not a compassionate allowance His claim is based upon his right to be maintained out of the properties of his putative father. The rate of maintenance would depend upon the extent of the income of the father's properties, the standard of living, the number of the members of the family who are entitled to maintenance and other similar circumstances It is impossible to compute the rate of maintenance in any arithmetical proportion without regard to the facts of each case.

K Rajah Aiyar and *D Narasaraju* for Appellant

P. Somasundaram and *M V Nagaramayya* for Respondents.

V S.

Appeal dismissed and Memorandum of objection allowed in part.

Mack, J
6th July, 1949

Malladi Seetharama Sastri *v.* Hyderabad State.
C R. P. No. 1193 of 1947.

Limitation Act (IX of 1908), *Article* 31—*Suit to recover value of machinery consigned to railway company for carriage but not delivered to consignee—Limitation—Starting point.*

N R C

A merchant consigned on 21st August, 1944, to the railway company some machinery for carriage from Bezwada to Lahore He received from the consignee a letter dated 7th November, 1944, to the effect that the goods had not reached him. The consignor sent a notice on 8th February, 1945, to the railway company complaining of the non-delivery of the goods and asking for payment of their value. To this letter he was not vouchsafed any reply He filed his suit on 31st October, 1945, for recovery of the value of the machinery On a question whether the suit was in time·

Held, in view of the fact that in 1944 railways were afflicted by war conditions and congestion in transit, two months and sixteen days could not be considered to be an unreasonable period within which a railway company ought to have delivered the goods. In any event the suit was filed within one year of the receipt of information of non-delivery and hence there is no substance in the technical plea taken by the railway that the suit is barred

V Subramanyam for Petitioner

V. K. Ramanathan instructed by *Messrs. King & Partridge* for Respondent.

V.S *Petition allowed.*

Rajamannar, C J and *Mack, J*
8th July, 1949.

T. Balasubramania Pillai *v.* Chief Judge, Court of Small Causes, Madras·
C M. P No 3425 of 1949

Letters Patent (Madras), clause 10—*Right of audience—Person holding power of attorney from a suitor—Has no right to plead in the High Court.*

Clause 10 of the Letters Patent provides that no person whatsoever but Advocates, Vakils or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the High Court There is however one exception provided and that is, any suitor shall be allowed to appear, plead or act on his own behalf, or on behalf of a co-suitor Hence, where a person is neither a suitor nor a co-suitor with another but only claims to hold a power of attorney from a suitor, though it may give him power to take other proceedings, cannot clothe him with the right to plead in the High Court.

(1937) 2 M L J 552 I.L R. 1938 Mad. 12 (F.B), Relied on

Party appeared in person.

V S. *Petition dismissed.*

Horwill and *Balakrishna Aiyar, JJ*
11th July, 1949

Vedde Venkatarayudu, *Accused.*
Referred Trial No 37 of 1949.

Criminal Procedure Code (V of 1898), *section* 342—*Examination of the accused—Object and purpose of—Proper manner of examination*

The purpose of the examination of an accused under section 342, Criminal Procedure Code, is to give the accused an opportunity of explaining the circumstances appearing in the evidence against him. That purpose is not properly

served by putting a long and involved question summarising the evidence of a number of witnesses The more satisfactory procedure would be to take the prominent facts in respect of which an explanation by the accused is necessary and put them to him one by one It must not be made a mere formality which serves no purpose

M Srinivasagopalan for Accused.

N T Raghunathan for the Public Prosecutor (*V L Ethiraj*) for the Crown.

V S. *Conviction and sentence confirmed.*

Rajamannar, C J and *Mack, J*
12th July, 1949

Devarajulu Naidu *v* Ethirajavalli Thayaramma and others.
C M. P No 145 of 1949.

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *section* 7 (2) (ii) (a)—*Original tenancy in favour of three persons who were partners in a firm—Dissolution of firm —One partner allowed to wind up affairs and subsequently use premises for his sole business—If amounts to transfer or sub-letting of premises*

Where the original tenancy was in favour of three persons who were partners in a firm, and after its dissolution one of the partners is allowed to wind up the affairs of the partnership and thereafter is allowed to use the premises for his sole business, such act of the two partners other than the one carrying on the business cannot amount to a transfer or sub-letting of the premises to that partner by the others. Hence, where the appellate tribunal under the Madras Buildings (Lease and Rent Control) Act, holds under such circumstances that the landlord is entitled to eviction on this ground, the order is vitiated by an error of law apparent on the face of the record and has to be quashed.

V Ramaswami Aiyar and *M Natesan* for Petitioners

V C Gopalaratnam for Respondents 1 to 3.

V S *Order quashed.*

Rajamannar, C J, and *Mack, J*
12th July, 1949

Jagannatha Iyer *v* Annajathai.
C M P No 137 of 1949.

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *section* 7 (3) (a) (i)—*Occupation of a single room of a house by the main tenant—If precludes him from obtaining relief under section* 7 (3) (a) (i)—*New point to support appellate tribunal's order—If can be allowed to be raised in an application for the issue of a writ of* certiorari *to quash that order.*

According to the definition of a building in the Madras Buildings (Lease and Rent Control) Act, it is not any part of a building that is a building under the Act It must be a part of a building " let or to be let separately " for residential purposes Hence a single room in which the articles belonging to the main tenant of the premises are stored and locked up , cannot be held to be part of a building let or to be let separately for residential purposes This fact, therefore, namely, the fact that the main tenant is in occupation of a single room cannot preclude him from obtaining relief of ejecting his sub-tenant to which he is entitled under section 7 (3) (*a*) (i) of the Act Where the appellate tribunal under the Act holds such a person to be in occupation of a residential building of his own and refuses

to give him on that ground the relief he is entitled to, the order of the appellate tribunal is vitiated by an error of law apparent on the face of the record and has to be quashed

The Court will not allow a new point to support the order of the appellate tribunal to be raised in an application for the issue of writ of *certiorari* to quash the order of the appellate tribunal

K Sankara Aiyar and *V Sundaresan* for Petitioner

A Narasimhachari for 1st and 2nd Respondents

V S *Order quashed.*

Panchapakesa Ayyar, J. C. V Rajagopalachari, *Accused.*
13th July, 1949 C A No 748 of 1948.

Indian Press Emergency Powers Act (XXIII of 1931), *sections* 18 *and* 4 (1) (d) —*Prosecution under section* 18—*Facts to be proved—Intention or motive in publishing the offending matter—Relevancy—Scope of section* 4 (1) (d)

In prosecutions under section 18 of the Indian Press (Emergency Powers) Act, the prosecution need only prove that a document other than a newspaper has been intentionally made and published and that it contains either published news or comments on published news or any matter described in sub-section (1) of section 4 of the Act without obtaining the necessary permission of the Magistrate under section 15 of the Act. Sub-section 1 (*d*) of section 4 does not mention anything about the intention or motive in publishing such words but simply says that the document in question should contain words, signs, etc , which tend directly or indirectly to bring into hatred or contempt the Government established by law. In other words, it is the effect of the contents of the documents, the *objective aspect* that is covered by section 4 (1) (*d*) and not the intention or motive or the *subjective aspect*, or the *mens rea* in uttering or publishing those words which would be material for a prosecution for sedition under section 124-A, Indian Penal Code.

A pamphlet of four pages without any cover, whether a "book" or not will fall within the definition of a "news sheet" and where taken as a whole and without tearing any statements made therein out of their contest, tends directly or indirectly to bring the Government into hatred or contempt, whatever be the intention or the motive of the author in publishing it, it will fall within the scope of section 4 (1) (*d*)

Accused in person

The Crown Prosecutor (*S. Govind Swaminathan*) on behalf of the Crown.

V S *Conviction confirmed, but fine reduced.*

Panchapakesa Aiyar, J Venkatachala Udayar *v* The Executive Officer,
14th July, 1949 Rasipuram Panchayat Board.
Cr. R. C. No. 740 of 1948.
(Cr. R P. No. 657 of 1948.)

Madras Local Boards Act (*XIV of* 1920), *sections* 194 (1) (b) *and* 212 (ii)—*Scope and applicability—Installing a motor power pump in a field-well without licence—If an offence—Nature of the provisions of section* 212 (ii).

Section 194 (1) (*b*) of the Madras Local Boards Act will apply only to installations in premises for the purposes of industries and factories, the minor head under which this section comes and will have no possible application to a pump installed in a field-well for irrigation purposes and as such a conviction for such installation cannot be upheld and has to be quashed

The provision as to the time of 30 days given in section 212 (*ii*) of the Act is a mandatory one passed by the Legislature after mature consideration and it is not for a Magistrate to ignore it and stretch a point against a person accused of a criminal offence for having acted as if his request for a licence had been granted. When the accused had applied for a licence on 10th September, 1946, and the order of refusal was only on 12th February, 1947, but he had installed the pump after waiting for 30 days, he must be deemed to have been granted the licence for the pump for that year and cannot be convicted for installing the pump without the licence

V V Srinivasa Aiyangar for *K Sankara Sastri* for Petitioner

The Crown Prosecutor (*S Govind Swaminathan*) for the Public Prosecutor (*V. L Ethiraj*) on behalf of the Crown

V.S.

Conviction and sentence set aside.

Subba Rao and *Somasundaram, JJ*
14th July, 1949

S N. Seshier *v* The Catholic Syrian Bank, Ltd., and others.
Appeal No 123 of 1946.

Mortgage suit—Two final decrees—If can be passed

The provisions of the Civil Procedure Code do not in any way prohibit the passing of two final decrees in a suit if the circumstances of a particular case render it convenient or necessary to do so The passing of two final decrees in a mortgage suit is not without jurisdiction The explanation to the definition of "decree" in sub-section (2) of section 2, Civil Procedure Code, also indicates that there can be two final decrees in a suitable case

(1947) 2 M L J 523, applied

C S Vidyasankaran for Appellant

T K Subramanya Pillai for Respondent

V.S

Rajamannar, C J and *Balakrishna Aiyar, J*
15th July, 1949

Saraswathi Ammal *v* Rajagopal.
Appeals No 625 of 1945 and No 200 of 1946.

Hindu Law—Endowment by Hindu widow for performance of daily pooja, gurupooja at the tomb of her husband and annadhanam on the anniversary of his death—Validity of dedication.

Where a Hindu widow dedicates properties under a settlement deed for the performance of daily pooja, a special gurupooja at the tomb of her husband and annadhanam on the anniversary of his death, the dedication is invalid *in toto*.

68 M L J 107 I L R 58 Mad 204 (211); (1945) 1 M.L J. 328; (1946) 1 M L J 354, Relied on I L.R. 44 All 503, distinguished.

K. V. Krishnaswami Aiyar, P. N. Appuswami Aiyar, S. V Gopalakrishna Aiyar and *K. Vaitheeswaran* for Appellants in Appeal No 625 of 1945 and Respondents in Appeal No 200 of 1946.

S Ramachandra Aiyar for Respondent in Appeal No. 625 of 1945 and Appellant in Appeal No 200 of 1946

V S. *Decree modified.*

Panchapakesa Ayyar, J.
15*th July*, 1949

Kotamsath Appanna *v* Koppuju Appalaraju.
Cr R. C No 139 of 1949.
(Cr R. P No 134 of 1949).

Indian Penal Code (XLV of 1860), *section* 406—*Jewel taken from goldsmith as sample for approval—Retained towards debt due by goldsmith—Offence made out*

Where a person takes from a goldsmith a gold jewel for showing it to his wife and placing an order for a similar jewel if she approved of it but fails to return it and retains it with himself towards some debts due to him by the goldsmith, he will be guilty of an offence under section 406 of the Indian Penal Code He has utilised the jewel for a purpose not intended and against the express agreement. The mere fact that the jewel is intact is irrelevant

Y Suryanarayana for Petitioner.

E. Venkatesan for Respondent.

The Public Prosecutor (*V. L Ethiraj*) on behalf of the Crown

V S. *Petition dismissed.*

Panchapakesa Ayyar, J.
29*th July*, 1949

Govindaswamy and others, *Petitioners.*
Cr R C No 885 of 1949.
(Cr R. P No 821 of 1949).

Madras City Police Act (III of 1888), *section* 75—*Applicability—If confined to riotous behaviour as a result of being drunk*

It is not correct to say that section 75 of the Madras City Police Act would apply only to persons guilty of riotous and disorderly or indecent behaviour as a result of being drunk. The section punishes both drunkards, incapable of taking care of themselves, and people guilty of riotous or disorderly or indecent behaviour in any public place.

N. S. Mani for *Messrs. Row and Reddy* for Petitioners.

The Crown Prosecutor (*S Govind Swaminathan*) on behalf of the Crown.

V.S. *Sentence modified.*

Subba Rao and *Somasundaram, JJ.*
7th July, 1949

Ganapathy Subramania Iyer and others
v Alloor Gopalaswami Naidu and others.
A.A O. No 138 of 1947.

Madras Agriculturists' Relief Act (*IV of* 1938), *section* 8 (4)—*Scope and applicability —Not confined to excess payments made prior to 1st October*, 1937.

Sub-section (4) of section 8 of the Madras Agriculturists' Relief Act saves excess payments from the operation of sub-sections (1), (2) and (3) of section 8 Under this sub-section, the creditor is enabled to retain any excess payments paid to him The terms of this sub-section are clear and unambiguous and the language is couched in general terms The operation of this sub-section is not limited expressly or by necessary implication to excess payments made before 1st October, 1937

(1945) 1 M L J 386, dissented from.

G R Jagadisan for *S Ramaswami Aiyar* for Appellant

S Venkatesan for Respondent

V S *Appeal allowed*

Horwill and *Balakrishna Ayyar, JJ*
7th July, 1949

Dorairajan Nayanim Varu and others
v Ramaswami Naidu and others.
A A O No 462 of 1947.

Civil Procedure Code (*V of* 1908), *section* 47—*Execution of personal decree under Order* 34, *rule* 6, *against family property of the deceased judgment-debtors and their legal representatives—Right of legal representatives to object to the execution on the ground that there was no debt*

In execution of decree on a mortgage executed by a mother and her two sons, the hypotheca was brought to sale and as it was insufficient to discharge the mortgage debt a personal decree under Order 34, rule 6, Civil Procedure Code, was passed against the sons after overruling their objection that nothing remained due In execution of this decree, the legal representatives of those two sons, who had died in the meanwhile, objected to the execution on the ground that no debt was due On the question whether the executing court could go into the question,

Held, that as the legal representatives were questioning the correctness of the decree itself, it cannot be gone into by the executing Court

I L R 1940 Mad 123 and I L R 1942 Mad 271 (1941) 2 M L J 622 relied on

N R Raghavachariar for Appellant

K Umamaheswaram for Respondent

V S *Appeal dismissed.*

Raghava Rao, J
19th July, 1949

Korath Illath Vallapil Mammali Haji's son Kunheethu *v* Vayyavinat Manakunnath Tavazhi Karnavan Vasunni
S A No 1210 of 1946

Malabar Tenancy Act (*XIV of* 1930), *section* 20 (5)—*Suit falling under—Plaintiff not making out allegations in the plaint with reference to section* 20 (5)—*Duty of court—Plaintiff if can ask for suit being dealt with under section* 20 (3) *of the Act*

Where in a suit falling under section 20 (5) of the Malabar Tenancy Act, the plaintiff fails to make out his right to evict on the allegations in the plaint made with reference to clause (5) of section 20 of the Act, the only course open for the Court to adopt is to dismiss the suit It will not in such a case be open to the plaintiff who has failed to make out the foundation for the suit with reference to the requirements of clause (5) of section 20, to fall back upon the consideration that two of the three requirements of clause (5) which are the requirements of clause (3), stand made out and that the suit must be dealt with as a suit under clause (3) of section 20

(1946) 1 M L J 94, followed.

M Chinnappan Nair and *M Narayanan Unni* for Appellant

D H Nambudiripad for Respondent

V S *Appeal allowed Leave refused*

N R C

Govinda Menon, J Guruswami Goundan and others *v* Marappa Goundan and others
22nd July, 1949 S A Nos 486 and 487 of 1946

Hindu Law—Joint family—Renunciation of a father's rights in joint family properties on his being paid maintenance—Validity

The law recognises the relinquishment by a member of a joint Hindu family of his rights in the joint family properties. It would enure for the benefit of all the other members thereof

71 M L J 558 I L R 1937 Mad 1 (P C), (1945) 1 M L J. 140 I L R 1945 Mad 610 (FB.) referred to

The texts envisage only the renunciation of a son and not by the father or grandfather There is no specific text or authority which shows that the father could renounce his rights in joint family property by taking a trifling or something for his means of livelihood If a son can renounce his rights, a father who can compulsorily effect a partition under the Hindu Law, can renounce his rights by taking something for maintenance This action of his can be construed as either an effacement of his own rights by not taking anything or partitioning the property among the sons after taking maintenance Therefore a renunciation of his rights by a father after agreeing to receive maintenance is valid

P Ramachandra Reddi, C A Vaidilingam and *T Venkatadri* for Appellants.

K. Bhashyam for *T R Srinivasan* and *S Gopalaratnam* for Respondents

V S ——— *Appeals dismissed Leave refused*

Raghava Rao, J Balekkala Subbaraya Bhatta *v* Nuliyal Govinda Bhat
22nd July, 1949 S A No 528 of 1947

Provincial Small Cause Courts Act (IX of 1887), schedule ii, Article 2 and Civil Procedure Code (V of 1908), section 102—Acts contemplated by Article 2 of Schedule II—Suit to recover back amount of court-fee paid to Government under a decree in a pauper suit which was later superseded—Second appeal—Competency, when value does not exceed Rs 500

Article 2 of Schedule II of the Provincial Small Cause Courts Act refers to acts done by persons not acting as suitors in pursuance of a judgment or order which gives permission so to act, but as ministerial officers or otherwise obeying the order of the Court

Where the essence of an action relates to the recovery of the amount paid by the plaintiff himself as a mere suitor *i e*, as the defendant in a former pauper suit of a certain sum representing the court-fee payable to Government under a decree later superseded, the suit is not outside the jurisdiction of the Court of Small Causes and where its value does not exceed Rs 500 a second appeal is incompetent

K Srinivasa Rao for Appellant

K Y Adiga and *K P Adiga* for Respondent

V S ——— *Appeal dismissed Leave refused*

Mack, J Kadiyala Peravadhannulu *v* Kadiyala Peravadhannulu.
25th July, 1949 C R P No 20 of 1948

Court-fees Act (VII of 1870), schedule I, article 1—Suit for partition by a member of a joint family —Defendant directed to pay specific sum to plaintiff on an account being taken of outstandings due—Appeal by defendant—Court-fee payable

For fiscal purposes the liability of a manager of a Hindu joint family business to account to other members of the joint family cannot be differentiated from an ordinary suit for account as between partners The principle of valuation is contained in article 1, schedule I of the Court-fees Act In a plaint or memorandum of appeal Court-fee is payable on the amount or value of the subject-matter in dispute

Where a defendant in a joint family partition suit is directed to pay the plaintiff a specific sum on an account being taken of the outstandings due, and the defendant appeals, the subject-matter in dispute has been ascertained and so *ad valorem* court-fee on the relief which he wished to avoid should be paid

(1938) 1 M L J 628 I L R (1938) Mad 598 (F B), applied

P Somasundaram for Petitioner

The Government Pleader (*K Kuttikrishna Menon*) for Respondent

V S ——— *Petition dismissed.*

Satyanarayana Row and *Viswanatha Sastri, JJ* Arunachala Mudaliar *v* Muthusadasiva Mudaliar.
4th July, 1949 A A O No 278 of 1947.

Limitation Act (IX of 1908), *Article* 182 (5) *and Civil Procedure Code (V of* 1908), *Order* 21, *rule* 11 *and Civil Rules of Practice, rules* 142 *and* 143—*First execution petition filed without the copy of the decree—If an application in accordance with law—Rules* 142 *and* 143 *of the Civil Rules of Practice cannot override the provisions of the Civil Procedure Code.*

Rule 142 of the Civil Rules of Practice is a mere re-numbering of the old rule 164 framed under the Civil Procedure Code of 1882 Rule 142 has not been made or promulgated in accordance with the procedure prescribed by part X of the Civil Procedure Code of 1908 According to section 157 of the Civil Procedure Code of 1908, the rules made under the Code of 1882, shall so far as they are consistent with the Code of 1908 have the same force and effect as if they have been made under the new Code The necessary corollary is that if the Civil Rules of Practice framed under the old Code are, to any extent, inconsistent with the provisions of the Civil Procedure Code of 1908, they *pro tanto* cease to have operation after the coming into force of the Code of 1908 Order 21, rule 11, is part of the Code of 1908 and in so far as rule 142 of the Civil Rules of Practice is inconsistent with it, the latter must stand abrogated I L R 1938 Mad 734, relied on

According to the provisions of Order 21, rule 11, the production of a certified copy of the decree sought to be executed as an annexure to the first execution application is not necessary and a certified copy need be furnished only if and when the Court required the applicant to produce it Rule 142 of the Civil Rules of Practice in so far as it requires an applicant who first applies to execute his decree to produce along with his application a certified copy of the decree is inconsistent with Order 21, rule 11 (2) and (3) and the two provisions cannot stand together.

Where in a first application to execute a decree, the certified copy of the decre is not filed, it cannot be said that the application is one not in accordance with law under Article 182 (5) of the Limitation Act

(1937) 2 M L J 881, followed and (1949) 1 M L J 66, overruled

A C Sampath Aiyangar for Appellant

K Srinivasan for Respondent

V S

Appeal dismissed.

Mack, J The Melaikote Bank *v* Palaniappa Goundan and others.
7th July, 1949 C R Ps No 1325, 1326 of 1946 and 254 of 1947.

Civil Procedure Code (V of 1908), *section* 73—*Receipt of assets—Crucial date*

Where in pursuance of an order passed by a superior Court, assets realized in execution of a decree of a subordinate Court are transferred to the superior Court, the assets are deemed to be received within the meaning of section 73, Civil Procedure Code, by the transferee superior Court when they are actually received by that Court

A I R. 1927 Bom 247, relied on

N R Sesha Aiyar for. Petitioners

V. Ramaswami Aiyar and *P Chandra Reddi* for Respondents

V.S.

Petitions allowed.

Subba Rao and *Somasundaram, JJ* Ramaswami Pillai *v* Sankara Mudaliar
14th July, 1949 A S No 526 of 1945

Madras Agriculturists' Relief Act (IV of 1938 *as amended by Madras Act XXIII of* 1948), *section* 8, *Expl I—Applicability—Mortgage with a direction to the mortgagee to pay debts of the debtor—If a "renewal" in favour of a "different creditor"—Receipt of money from Court by mortgagee—Rule of appropriation mentioned in Explanation, if can be applied*

It is wrong to say that the words "different creditor" in Explanation 1 to section 8 of the Madras Agriculturists' Relief Act added by the Amending Act of 1948, is comprehensive enough to include even a third person in whose favour

the debtor executed a document requesting him to discharge the earlier debt. The meaning to be attached to the words "different creditor" is necessarily controlled by the clause "where a debt has been renewed or included in a fresh document" To state that the document executed in favour of a third party with a direction that the amount may be paid to the earlier creditor is renewal of the earlier promissory note is certainly doing violence to the language of the Explanation The established meaning of "renewal" or "inclusion" cannot be ignored unless the words used are clear and unambiguous The fundamental idea of "renewal and inclusion" in the fresh document is that the new contract also must be between the same parties or substantially the same parties So the words "different creditor" in the Explanation cannot apply to a creditor from whom amounts were borrowed for the purpose of discharging earlier debts In no sense of the term can that document executed in favour of that creditor be a renewal of the earlier document or an inclusion of an earlier debt in a fresh document

The rule of appropriation provided for in Explanation 1 to section 8 of the Act cannot be applied to a case of receipt of money from Court under directions in a decree

D Ramaswamy Aiyangar and *P S Srinivasa Desikan* for Petitioner

K Bashyam Aiyangar, A C Sampath Aiyangar and *R Desikan* for 1st Respondent.

V S ——— *Appeal dismissed.*

Horwill and *Satyanarayana Rao, JJ* Jaswant Mull Sowcar *v* Collector of Madras.
15th July, 1949 C M P No 2151 of 1949.

Land Acquisition Act (I of 1894), section 54—Appeal in case which may fall under section 109 (c), Civil Procedure Code—Competency

The right of appeal under section 54 of the Land Acquisition Act is limited by section 110, as well as by Order 45, Civil Procedure Code Section 110 has reference only to clauses (*a*) and (*b*) of section 109 and not to clause (*c*) The absence of any mention of section 109 of the Civil Procedure Code in section 54 of the Land Acquisition Act shows that the Legislature did not intend to give a right of appeal against an order of the High Court, unless it fell under clauses (*a*) and (*b*) of section 109 which are dealt with in section 110 and so the section excludes a right of appeal on the ground of a case being a fit one to appeal under clause (*c*) of section 109

S Swaminathan for Petitioner

The Crown Solicitor for Respondent

V S ——— *Petition dismissed.*

Krishnaswami Naidu, J Dr A Krishnaswamy *v* V Natesan and others.
25th July, 1949 Cr R P No 32 of 1949.

Practice—Election Petition to set aside election filed before the Chief Judge of the Court of Small Causes—Ordering inspection of marked rolls, counterfoils of ballot papers, etc —Duty of Court

In an election petition, the powers of ordering inspection must be exercised with some circumspection It is necessary that before an order for inspection is made, the Judge should be satisfied that the inspection of the documents was required *bona fide* for the purpose of the enquiry. Since great sanctity is attached to the secrecy of the ballot it is not advisable to give a roving inspection of the ballot papers and other documents and thus violate the principle of secrecy of ballot. Where an order for inspection is made on the consent of both sides it cannot be said that the Court had applied its mind and considered whether in fact the inspection was required for the *bona fide* purpose of proving the petitioner's case

D Narasaraju and *V Somasundaram* for Petitioner

Messrs John and Row, K V Rajagopalan and *S V Rama Aiyangar* for Respondents.

V.S. ——— *Petition allowed.*

Krishnaswami Naidu, J — Gopalakrishnamurthi *v* Sreedhara Rao
25th July, 1949 — C R P No 1459 of 1948

Civil Procedure Code (V of 1908), *Order* 6, *rule* 17—*Facts alleged in the proposed amendment available even at the time of filing of plaint—Amendment making out a new case on those facts—If can be allowed*

Where certain facts are alleged in a proposed amendment of the plaint which facts were available to the plaintiffs and which they had not chosen to mention in the original plaint, it would not be open to the Courts to permit such an amendment as it would permit a new case to be made on facts which were available but were not pleaded

P V Chelapathi Rao for Petitioner

V Suryanarayana for Respondent

V S — *Petition allowed*

Krishnaswami Naidu, J — Narayanappa *v* Suryanarayana and others.
27th July, 1949 — C R P No 153 of 1949

Civil Procedure Code (V of 1908), *Order* 8, *rule* 1—*Substitution* in toto *of one written statement for another already filed—Power of Court*

There is no provision in the Civil Procedure Code to enable the Court to permit the substitution *in toto* of one written statement for another already filed A Court has no jurisdiction to pass an order directing such substitution

K. Venkatesam for Petitioner

C Rama Rao for Respondent

V S — *Petition allowed*

Govinda Menon, J — Saboora Bivi Ammal *v* Julaika Bivi Ammal
29th July, 1949 — C R P No 444 of 1949

Civil Procedure Code (V of 1908), *Order* 26, *rule* 15—*Expenses of the commission—Meaning of*

The phrase " expenses of the commission " in ordinary parlance would mean only what the Commissioner has to spend for summoning witnesses and for other incidental expenses relating to the examination of the witnesses before him It is wrong to construe that expression in Order 26, rule 15, Civil Procedure Code, as including the expenses to be defrayed by the opposite party to the one applying for the issue of a commission for proceeding from the locality where the Court is situate to the place where the Commissioner is to function

Observations of Mack, J , in (1948) 2 M L J 652, considered to be wide

K S Desikan and *T R Ramachandran* for Petitioner

T S Venkatarama Aiyar for Respondent

V S. — *Petition allowed.*

Somasundaram, J — Chebbrole Narayana *v* Chendra Rudrayya
3rd August, 1949 — Cr R C No 625 of 1948.
(Cr. R P No 585 of 1948).

Criminal Procedure Code (V of 1898), *sections* 259 *and* 345—*Discharge in case of offences lawfully compoundable without permission being given—Legality*

It is wrong to think that in cases where offences may be lawfully compounded, the accused cannot be discharged under section 259 of the Criminal Procedure Code without giving permission for compounding

V T Rangaswami Aiyangar and *R Santanam* for Petitioners.

C Rama Rao for Respondent

The Public Prosecutor (*V. L Ethiraj*) on behalf of the Crown.

V S. — *Order set aside.*

N R C

Panchapakesa Ayyar, J Puvvada Ramaswamy *v* Bhatraju Nageswara Rao.
5th August, 1949 A A O No 460 of 1947

Civil Procedure Code (V of 1908), *Order* 41, *rules* 23 *and* 25—*Order of lower appellate Court remanding suit to trial Court for framing an issue about the liability of the suit debt being scaled down under Madras Act IV of* 1938—*Appeal against—Competency.*

Under the latest rules framed under the Civil Procedure Code an appeal will lie to the High Court against all orders of remand by the lower appellate Court under Order 41, rule 23, directing the framing of an issue about the liability of the suit debt being scaled down under Madras Act I of 1938 Rule 25 will not apply to such a case

N. Bapiraju for Appellant

M Appa Rao for Respondent

V S *Appeal allowed Leave granted.*

Rajamannar, C J and Krishnaswamy Naidu, J Rajammal *v* The Chief Judge of the Court of Small Causes.
10th August, 1949 C M P No 2478 of 1949

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *sections* 4 *and* 6—*Fixation of fair rent—Fair rent fixed in excess of rent which was being paid prior to such fixation—Date from which landlord is entitled to the fair rent*

Where the fair rent fixed under section 4 of the Madras Buildings (Lease and Rent Control) Act is in excess of the rent which was being paid before such fixation, the landlord cannot claim the difference from any date anterior to the date of the filing of the application under section 4 There is no provision corresponding to section 6 (*c*) which provides for refund or other adjustment of any sum paid by the tenant in excess of the fair rent The omission to make such a provision might have been deliberate having regard to the avowed policy of the Act to safeguard the rights of tenants Apart from any speculation as to the policy, it is clear that no retrospective operation can be given to the order fixing the fair rent unless such operation is expressly provided in the Act or should be necessarily implied

G. T. Ramanujachari for Petitioner.

P. Bhoopathy for Respondent.

V S *Order quashed.*

Somasundaram, J. The Public Prosecutor *v* Sinnappa and others.
11th August, 1949 Crl Appeal No. 645 of 1948.

Criminal trial—Procedure—Number of cases against different accused for offences under the Prohibition Act—Trial begun as separate cases—Clubbing all cases together at the defence stage—Legality.

Where a number of cases against different accused rounded up on a single occasion for offences under the Prohibition Act are before a Magistrate he should make up his mind whether to try them all together or not before the commencement of the cases. If he starts the trial separately in respect of each case, it is not open to him to club all the cases together after the evidence had been recorded and at the defence stage.

(Re-trial not ordered)

The Assistant Public Prosecutor (*A S Sivakaminathan*) for Appellant.

G Balaparameswari Rao for *P. Suryanarayana* for Respondents.

V.S. *Appeal allowed.*

Krishnaswamy Naidu, J. Thangaswami Pillai *v* Dhanabagyammal
29th July, 1949. C R P. No. 327 of 1949.

Court-Fees Act (VII of 1870), section 17—Distinct subjects—Test.

The question whether a suit embraces two or more distinct subjects does not depend upon the causes of action on which the plaint is based, but depends upon the basis of the claim and the right under which the plaintiff claims

Where the basis of the claim of the plaintiff for possession is that a Court-sale in favour of one of the several defendants in execution of a decree passed against another defendant was null and void, the properties being trust properties, and the plaintiff could succeed against all the defendants who were in possession of different items if he succeeded in proving the properties to be trust properties, the suit does not embrace distinct subjects but only one subject and as such section 17 of the Court-Fees Act could not be made applicable to such a suit

M S Venkatarama Aiyar for Petitioner

The Government Pleader (*K Kuttikrishna Menon*) and *K. Srinivasan* for Respondent

V S *Petition allowed*

Viswanatha Sastri, J Udipi Municipal Council *v* U Vasudevacharya
4th August, 1949. S A No 1271 of 1946

Madras District Municipalities Act (V of 1940), sections 81 (4) and 354 (1)—Land to which section 81 (4) applies—Test—Assessment—Scope of bar as to agitation in Civil Court.

Section 81 (4) of the District Municipalities Act applies to land used exclusively for agricultural purposes and is not confined to cultivable or agricultural land Where an urban vacant site has never been ploughed, tilled or sown at any time and no tree or shrub has been planted by the owner, it could not be said that the land has been used exclusively for agricultural purposes merely because the leaves of the shrubs growing on the plot are collected and used for manuring other lands.

No doubt where the basis of the assessment itself is erroneous, the levy of the tax on that basis would be illegal and it would be open to the Court to interfere and prevent the unauthorised levy or direct refund of the tax that has been collected under compulsion Where a Municipal Council empowered to levy assessment under sections 81 (3) and 81 (4) of the District Municipalities Act on vacant land decides the question of fact that the land in question was not used exclusively for agricultural purposes, the Civil Court cannot assume the powers of the assessing authority and investigate the facts afresh to find out whether the Municipal Council's conclusion on the facts was correct

K. Kuttikrishna Menon for Appellant

K. Srinivasa Rao for Respondent

V.S *Appeal dismissed.*

Mack, J. Salma Bi *v* Mohammad Ibrahim Sahib.
11th August, 1949 C R. P. No. 1729 of 1948.

Civil Procedure Code (V of 1908), section 132 (1)—Muslim purdah ladies if entitled to claim exemption from personal appearance in Court as of right

The time has come when section 132 (1), Civil Procedure Code, should be given a fresh judicial interpretation to accord with the customs and manners of the country which have greatly changed. As customs and manners of the country stand to-day, no Muslim lady or purdanashin lady has an absolute right to claim exemption from personal appearance in Court. It does not mean that no purdanashin lady should be examined on commission Whether or not this should be done would depend upon the facts of each case, the position of

the lady in the litigation, the nature of the evidence she has to give and the circumstances in which she is placed.

G. R. Jagadisan for Petitioner

Respondent not represented.

V.S ——— *Petition dismissed.*

Subba Rao and Krishnaswami Naidu, JJ. *12th August,* 1949.

K M S Kumarappa Chettiar *v* The Official Receiver W. Tanjore, L P A No 65 of 1948

Letters Patent (Madras), clause 15—*Order refusing leave to file Letters Patent Appeal against judgment of single Judge in second appeal—If appealable*

An order refusing leave to appeal under the Letters Patent against the judgment of a single Judge in second appeal is a part of the judgment in the second appeal itself, and against such an order there is no appeal under clause 15 of the Letters Patent.

54 Bom 331, 57 M.L.J 398; I.L.R. 59 Mad. 293, followed

V. V. Srinivasa Aiyangar for Appellant.

N. Rajagopala Aiyangar for Respondent

K. Bashyam Aiyangar for the Madras Advocates' Association

V.S. ——— *Appeal dismissed.*

P V. Rajamannar, C J and Mack, J *28th August,* 1949

Kandan Textiles, Ltd *v* The Industrial Tribunal (1), Madras and others C M P. No 3894 of 1949.

Certiorari, *writ of—Issue of writ to quash award of an Industrial Tribunal under the Industrial Disputes Act after its award had been declared by Government under section* 15 *of the Act to be binding—Competency of Court—Industrial Disputes Act (XIV of* 1947), *section* 10·(1) (c)—*Reference of dispute to a Tribunal—When justified—"Industrial dispute"—Dispute if should be between employer and the majority of workmen.*

It cannot be said that a writ of *certiorari* cannot be issued to quash the award made by an Industrial Tribunal under the Industrial Disputes Act after the Government had under section 15 of the Act declared the award to be binding on the employer and employees I L.R 1941 Mad 807, Rel on.

The Government before it makes an order under section 10 (1) (*c*) of the Industrial Disputes Act must be satisfied that the industrial dispute which is being referred for adjudication exists or is apprehended, and the Government should have material before it to form an opinion that an industrial dispute exists or is apprehended. It is incumbent upon the Government to apply its mind to the relevant material placed before it before making an order under section 101 (c) of the Act. (1949) 1 M L J. 231 (232), Foll.

It was held that the reference by Government was bad as it was not established that there was a dispute between the employer and the workers because the authority of the particular union of workers who made the complaint to represent any worker had not been proved.

Per *Rajamannar, C J*—I must however suggest that the intention of the Legislature may be expressed in a more clear and unambiguous language than it is at present to decide whether an individual dispute between an employee or employees on the one side and the employer on the other side is an "industrial dispute" which could be referred to a Tribunal for determination even when a substantial section of the entire establishment or a recognised part of the establishment does not take up his or their cause.

V K. Thiruvenkatachari and *G. Vasanta Pai* for Petitioner.

The Advocate-General (*K Rajah Aiyar*) instructed by Government Solicitor for 1st Respondent

S. Viswanathan for 2nd Respondent.

V. Srinivasan for 3rd Respondent.

V.S. ——— *Petition ordered.*

Horwill and Balakrishna Ayyar, JJ.
5th August, 1949.

Koka Bhaskara Rao and others *v.* Tayi Hemlat Amma and others.
A A O. No 670 of 1946.

Civil Procedure Code (V of 1908), Order 21, rules 90 and 92 (2)—Sale in joint names of two persons—Application under Order 21, rule 90, impleading only one of the joint purchasers—Failure to implead the other if a ground for dismissal of application.

Where two persons bid jointly and the sale is knocked down in their joint names and the judgment-debtors file an application under Order 21, rule 90, Civil Procedure Code impleading only one of the joint purchasers, the application cannot be dismissed on that account. It is unnecessary under the proviso to sub-section (2) of rule 92 of Order 21, that all the persons affected should be formally impleaded In a proper case a sale can be set aside if notice goes to all persons affected

M. S. Ramachandra Rao for Appellant.

K Kameswara Rao, D. Suryaprakasa Rao, U. Sethumadhava Rao and *N. Rammohan Rao* for Respondent

V S.

Appeal allowed.

P. V Rajamannar, C.J and
Krishnaswami Nayudu, J
16th August, 1949.

P Ranganathan *v* Sankarlal Devev.
C M P No. 3780 of 1949.

Madras Buildings (Lease and Rent Control) Act (XV of 1946), sections 7 (2) (iii) (a) and 10—Sub-letting—Written consent—Necessity—Date of such consent—"Finally decided"—Meaning—Application withdrawn—Subsequent application if barred.

If there is a transfer or sub-letting after the commencement of the Madras Buildings (Lease and Rent Control) Act, the tenant can be saved only by a written consent of the landlord from the consequences, namely, eviction

It was held not necessary to decide in the case whether the written consent of the landlord need be necessarily of a date after the commencement of the Act. *Prima facie* a written consent given before the commencement of the Act might be sufficient to plead successfully to landlord's application for eviction on the ground of sub-letting after the Act came into force

The words "finally decided" in section 10 of the Act clearly implies that the prior application should have been decided on the merits Where the application for eviction was withdrawn with leave to file a fresh application on the view of the then state of law that notice terminating tenancy was necessary, it cannot be said that the petition is "finally disposed" so as to bar a fresh application for eviction

V. S. Rangaswami Aiyangar for Petitioner

M S. Venkatarama Aiyar and *T. S Purushotham* for Respondent

V S.

Application dismissed.

P. V. Rajamannar, C J, and
Krishnaswami Nayudu, J
17th August, 1949

K P. Mani Aiyar *v* Chief Judge, Court of Small Causes, Madras.
C M P No 3620 of 1949.

Certiorari—Error of law apparent on the face of the record—Allowing appeal against order of eviction on a view of law subsequently reversed

N R C

An appeal against an order of eviction was allowed by the Appellate Tribunal on the statement of the advocate for the landlord that in view of a decision of a Judge of the High Court, the appeal had to be allowed This decision of the Judge of the High Court was subsequently reversed On an application by the landlord for the issue of a writ of *certiorari* to quash the order of the Appellate Tribunal,

Held, in the circumstances, the order of the Appellate Tribunal must be held to be vitiated by an error of law apparent on the face of the record The only course open to the landlord was to move the High Court for the issue of a writ of *certiorari* to quash it He could not get rid of it by filing a fresh petition.

A. Ramachandran for *Messrs Row and Reddi* for Petitioners

S Rangaswami Aiyangar for Respondent

V S. *Petition allowed*

Somasundaram, J.
31st August, 1949

A S Govindan *v* Mrs Margaret Jayammal.
Cr R C No 435 of 1949.
(Cr R P. No. 385 of 1949).

Criminal Procedure Code (*V of* 1898), *sections* 488 (6) *and* 489—*Period of three months—Computation—Starting point—Change in circumstances—Meaning.*

It cannot be said that the period of three months mentioned in clause (6) of section 488, Criminal Procedure Code means three months from the date of the knowledge of the order There is no reason why the section should be read with the word " knowledge " which is not there

Change in the circumstances means change in the existence of circumstances and not change in the proof of circumstances

S K L Rattan of *Messrs Jacob and Rattan* for Petitioner

Respondent in person

G Gopinath for Crown Prosecutor (*S Govind Swaminathan*) for the Crown

V S. *Petition dismissed.*

Somasundaram, J.
2nd September, 1949

Ethirajulu Naidu, *In re.*
Crl. R C. No. 812 of 1949.
(Crl. R P. No 750 of 1949).

Madras Prohibition Act (*X of* 1937), *section* 4 (1) (a)—*Possession by carpenter of jar containing two gallons of varnish which contained denatured spirit—If an offence*

The object of the Madras Prohibition Act is to prohibit the consumption of intoxicating liquor Varnish is never intended for drink or can be used for intoxicating purposes Where a caprenter is found in possession of a jar containing two gallons of varnish which contained denatured spirit, though varnish has not been exempted from the purview of the Act, he cannot be convicted under section 4 (1) (*a*) of the Act.

B. V. Viswanatha Aiyar and *R Desikan* for Petitioner.

G. Gopinath for Crown Prosecutor (*S. Govind Swaminathan*) for the Crown.

V.S. *Petition allowed.*

Mack, J . Govindanathan *v* Anjaneya Pandithan
9*th August*, 1949 C R P No 1516 of 1948.

Civil Procedure Code (*V of* 1908), *Order* 33—*Proposed suit bad for misjoinder of parties and causes of action—Proper procedure.*

Order 33, Civil Procedure Code, does not specifically provide any procedure when the contemplated plaint discloses misjoinder of parties and causes of action In cases of misjoinder the suit *in toto* cannot be said to be barred by any law and a plaintiff or plaintiffs who are found guilty of misjoinder have the right to elect which cause of action they can pursue in the suit they seek to file. Strictly the objection as to misjoinder should be taken after the registration of the application as a suit. The application cannot be rejected on the ground of misjoinder.

R. Kesava Aiyangar and *S. Krishnamacharya* for Petitioner

Respondents not represented

K S *Petition allowed*

Mack, J Subbarama Reddi *v.* Sankaramma
10*th August*, 1949 C R P. No. 1790 of 1948

Civil Procedure Code (*V of* 1908), *Order* 22, *rule* 3—*Suit by father in joint Hindu family for partition against sons—Death of plaintiff—Widow's right to continue as his legal representative*

In a suit for partition against his sons by the father in a joint Hindu family on the death of the plaintiff it is sometimes difficult to pick out particular members of the family as his legal representatives. The additional criterion is in such a case to whom the right to sue survives The right of her husband to file a partition suit survives to his widow as the suit was against his own sons who would otherwise be his legal representatives The suit does not abate and it is not necessary that she must file a separate suit for partition

V. Venkatachari and *T. Rangaswami Aiyangar* for Petitioner.

K. S Champakesa Aiyangar and *K C. Srinivasan* for Respondent.

K S *Petition dismissed.*

Horwill and Balakrishna Ayyar, JJ. Mangayya *v.* Achayamma.
12*th August*, 1949 A. A O. No 601 of 1946.

Transfer of Property Act (*IV of* 1882), *section* 56—*Mortgagor selling items of mortgaged property to others who promise to pay off the mortgage—If a " contract to the contrary " affecting the buyer's right to have the mortgage debt satisfied out of properties not sold to him.*

The interest of the mortgagee remains dominant and any right given to the purchaser of certain items of the hypotheca is subject only to the superior rights of the mortgagee whose interest is not to be injured or jeopardised by any order which the Court might pass in favour of the purchasers The buyer is in the absence of a contract to the contrary, entitled to have the mortgage debt satisfied out of the properties not sold to him A mere agreement by the buyer of some items of the hypotheca to pay off the mortgage debt will not amount to a " contract to the contrary " within the meaning of section 56 of the Transfer of Property Act

(1945) 2 M L J 412, doubted

V Parthasarathi for Appellant

N C V Ramanujachari for Respondent

K S *Appeal dismissed*

Krishnaswamy Nayudu, J Kottan *v.* Kannan.
19*th August*, 1949 C R. P No. 789 of 1948.

Negotiable Instruments Act (*XXVI of* 1881), *sections* 64 *and* 74—*Suit by endorsee of simple on demand promissory note—Endorsee not entitled to decree against his endorser without proof of presentment for payment to maker and without notice of dishonour to the endorser*

Where the endorsee of a promissory note seeks to make the endorser liable the fact of presentment to the maker and issue of notice of dishonour to the endorser

should be made clear in the plaint itself as notice of dishonour is a material part of the cause of action. " Presentation " and " notice of dishonour " considered.

A Achuthan Nambiar for Petitioner

K Vittal Rao for Respondent.

K.S. *Petition allowed.*

Mack, J. Sambasiva Rao *v* Suryanarayanamurthy.

25th August, 1949 C. R. P. No. 454 of 1948.

Stamp Act (II of 1899), Schedule I, Article 1—Signature in an account book showing a certain amount as due on previous dealings—Admissibility as acknowledgment saving limitation though unstamped

A mere signature in a running account is not evidence of the debt of which there is already evidence in the account book It is merely an acknowledgment of the correctness of the account and does not require to be stamped. There is no law requiring an acknowledgment of liability for the purpose of saving limitation to be stamped Such a signature is therefore admissible in evidence as an acknowledgment which has the effect of saving limitation.

49 M L J 306, referred to

B V. Subrahmanyam for Petitioner

Respondents not represented

K S. *Petition dismissed.*

Rajamannar, C J and Krishnaswamy Nayudu, J. Srinivasalu Naidu, Petitioner.

31st August, 1949 C M. P. No. 6111 of 1949.

*Tender—Personal tender found against—Sending by money-order the amount of rent due deducting the expenses of money-order commission—Effect on tender—*De minimis *doctrine not applicable*

Where the small deficiency in the amount of rent tendered was not accidental but it was a case where the tenant deliberately deducted the actual money-order commission on the alleged ground that a personal tender had been made by him and refused (but such tender has been found against) it will not be permissible for the tenant to invoke the doctrine of *de minimis* and claim that the small deficiency must be deemed to have been tendered In the absence of a personal tender and its refusal the tenant was not justified in deducting the money-order commission from the amount sent to the landlord by money-order.

S Ramachandra Aiyar and *M A Srinivasan* for Petitioner.

K S *Petition dismissed.*

Rajamannar, C J ond Krishnaswami Nayudu, J. Shah Dhanaraj Kantilal *v.* Additional Judge, Court of Small Causes, Madras.

14th September, 1949. C. M P. No 3934 of 1949.

Madras Buildings (Lease and Rent Control) Act (XV of 1946)—Landlord applying for eviction on the ground of tenant's default in payment of rent—Son of landlord if can rely on that default after his father's death.

After the death of a landlord who had applied for eviction on account of the tenant's default, the landlord 's son is the landlord and so far as the default is concerned there is a default in payment of rent to the landlord. It is not as if the right to claim eviction was something peculiarly personal to the father which could not survive him Accordingly it cannot be said that the deceased landlord's son could not claim the benefit of the default which occurred during the lifetime of his father.

M. S Venkatarama Aiyar for *S Rangaswami Aiyangar* for Petitioner.

K. S Champakesa Aiyangar and *K C Srinivasan* for 2nd Respondent.

K.S. *Application dismissed.*

Viswanatha Sastri, J. Laxmi Sundaram *v* Suryanarayana.
12th August, 1949. S A. No. 1736 of 1946.

Hindu Law—Father—If liable for marriage expenses of daughter

The obligation to defray the expenses of the marriages of his sons and daughters is cast by the Hindu Law upon a father only, if there is any joint family property in his hands and not in other cases The personal legal obligation of the father extends to the maintenance of his wife and minor children under all systems of law. Accordingly a wife incurring expenses for the marriage of a daughter is not entitled to recover it from her husband

[Authorities discussed]

I L R 26 Mad 505 and 8 M L J 105, followed

Vepa P Sarathi for Appellant

K Bhimasankaram for Respondent.

K.S. ——— *Appeal dismissed.*

Horwill, J Bharadarajulu *v* Lakshminarayana.
12th August, 1949 C R P. No , 106 of 1947.

Civil Procedure Code (*V of* 1908) *section* 35-*A—Compensatory costs—When to be awarded.*

Before awarding compensatory costs under section 35-A of the Code of Civil Procedure the Court has to satisfy itself that the claim was false or vexatious to the knowledge of the plaintiff, that the interests of justice requires compensatory costs to be awarded, and that the defendant had put forward his objection that the suit was false or vexatious at the earliest opportunity. Compensatory costs should be awarded with some caution , but a revisional court is reluctant to interfere with the exercise of any discretion by the lower Court regarding costs, unless it has proceeded on some perverse or, any rate, some wrong considerations, or has disregarded the ordinary rules of law relating to the awarding of costs.

K. Mangachari for Petitioner

N. Subrahmanyam for Respondent

K S ——— *Petition dismissed.*

Viswanatha Sastri, J. Srinivasa Aiyer *v.* The Province of Madras.
12th *August* 1949 S A.No 385 of 1947.

Ryotwari village—Natham poramboke—Title to—Natham site—Title acquired by adverse possession for over sixty years—Government if can levy tree tax on trees standing in that site

The Government's right to levy a tree tax on poramboke trees in a natham whose usufruct is enjoyed by ryots is based on the Government's ownership of poramboke land If the Government have lost title to the land as for instance by lapse of 60 years of possession by the occupier, the Government cannot so long as the land is in the category of natham poromboke or unassessed land, levy an assessment upon it Nor can they levy a tree tax on trees grown upon land to which the Government has no title

A V Narayanaswami Aiyar for Appellant

The Government Pleader (*K Kuttikrishna Menon*) for Respondent

K S ——— *Appeal allowed Leave refused.*

Mack, J Jwarnal Shivnath Malu *v* Haji Ibrahim Kassam Uplitwala.
17th August, 1949 C R P No. 493 of 1949

Civil Procedure Code (*V of* 1908), *section* 20—*Jurisdiction—Contract for sale of goods F O R—Consignment found at destination to be not according to sample—Claim for breach—Court in place of such discovery has jurisdiction.*

The law presumes delivery to the buyer on a C I F or F O R contract at the time of the consignment on the basis that goods according to sample are being consigned If the seller fails to supply goods according to sample or dishonestly supplies goods of another description, the buyer in law has a right to refuse acceptance. Therefore it cannot be said that no part of the cause of action arose in the place where the buyer made the discovery that the goods onsigned were not

according to sample The District Munsiff's Court in that place has clear jurisdiction to try a suit resulting from damages alleged by reason of the breach of the implied contract underlying the C I F or F O R contract that the goods supplied would be in accordance with the particular sample or description It would be strange in law that if a merchant in Madras orders goods from Bombay F O R, or C I F, pays for them and finds on opening the consignment sent to him that they are not according to sample or of an entirely different description, he should be compelled to go to the Court in whose jurisdiction the seller lives and sue him there

Messrs Row and Reddy for Petitioner

L V Krishnaswami Aiyar for Respondent

K.S. —————— *Petition dismissed.*

Subba Rao and Chandra Reddi, JJ. Nadiammai Achi *v* Mariappa Thevar.
17th August, 1949 A A O No. 476 of 1946.

Madras Agriculturists Relief Act (IV *of* 1938), *Section* 5—*Applicability—Undivided Hindu family—Synonymous with joint Hindu family.*

Under section 5 of Madras Act IV of 1938, the words " undivided Hindu family" are synonymous with the words "joint family", section 5 has no application to the case of Hindu families divided in status

The fact that a divided family is assessed by a fiction as an undivided Hindu family under section 25-A of the Income tax Act cannot affect the real status of the family

R. Gopalaswami Aiyangar for Appellant

G. R Jagadisa Aiyar for Respondent

K S. —————— *Appeal dismissed.*

Viswanatha Sastri, J. Mangapathy Naidu *v* Krishnaswami Naidu.
19th August, 1949 S A No 502 of 1947.

Limitation Act (*IX of* 1908), *section* 20—*Amendment by Act XVI of* 1942—*Not retrospective in effect to revive a barred debt*

Debts which had according to the provisions of the old law already become barred by the date of the amendment of section 20 of the Limitation Act by Act XVI of 1942, will not be revived by the amendment.

Case-law discussed

(1944) 1 M L J 347 and (1945) 2 M L J 405, relied on

V V Raghavan and *M S Krishnamoorthy Sastri* for Appellant

M S Ramachandra Rao for Respondent.

K S. —————— *Appeal dismissed No leave.*

Mack, J. Muhammad Eusoof Maricar *v* Subramanian Chettiar.
23rd August, 1949. C R P. No 882 of 1948.

Civil Procedure Code (*V of* 1908), *sections* 16 *and* 20—*Agreement by permanent resident of Karaikal entered into at Karaikal to sell a building in the Tiruchirapalli District—Suit for specific performance in Tiruchirapalli —Jurisdiction*

A permanent resident of Karaikal, who is alleged to have entered into an agreement at Karaikal agreeing to sell a building owned by him in the Tiruchirapalli District can be sued at Tiruchirapalli for specific performance.

When a non-resident foreigner owns property within the jurisdiction of an Indian Court and enters into a contract regarding that property no matter where such a contract is entered into, the Indian Court clearly has jurisdiction to try that suit, by reason of the immoveable properties being situate within its jurisdiction 52 Mad. 809 (F B), distinguished.

C. A Seshagiri Sastri for Petitioner.

T M. Venugopala Mudaliar for Respondent.

K.S. —————— *Petition dismissed.*

Horwill and Balakrishna Ayyar, JJ Tirupathirayulu *v* Venkata Subba Rao.
25th August, 1949 A A A O. No 474 of 1946.

Madras Agriculturists Relief Act (IV of 1938), *section* 8, *Explanation (iii) (new)—If affects the law laid down in* (1941) 1 *M L J* 39 *and* (1941) 1 *M.L J* 718

It cannot be said that the new Explanation (iii) to section 8 of Madras Act IV of 1938 in any way affects the law laid down in (1941) 1 M L J 39 and (1941) 1 M L J 718 When a debt is split up the continuity of the debt is lost.

V Rangachari for Appellant

M S Ramachandra Rao for Respondent

K S ——— *Appeal allowed.*

Panchapakesa Ayyar, J Chinnabba Chetty *v* Chengalraya Chetty.
26th August, 1949 A A A O No. 130 of 1947.

Civil Procedure Code (V of 1908), *Order* 21, *rule* 32 (5)—*Applicability—Does not apply to prohibitory injunctions*

Only mandatory injunctions is intended to be covered by Order 21, rule 32 (5) of the Civil Procedure Code The sub-rule will not apply to a case of prohibitory injunction preventing interference by defendants with plaintiffs' right of way

G R Jagadisan for Appellant

T L Venkatarama Aiyar for Respndent

K S. ——— *Appeal dismissed Leave refused*

Horwill and Balakrishna Ayyar, JJ Rayarappan Nayanar *v* Mahavi Amma
30th August, 1949 C M P No 6017 of 1949.

Civil Procedure Code (V of 1908), *section* 109 (a)—*Order removing or appointing a receiver—Not " a final order " against which leave to appeal to Federal Court can be granted.*

A final order as contemplated by section 109 (*a*) of the Code of Civil Procedure must be one which affects finally the rights of parties An order removing or appointing a receiver does not affect at all the rights of the parties , it is merely an order making provision for the due preservation of the estate during the pendency of the suit As a general rule and in the absence of special circumstances or some unusual occasion for its exercise, the power of making interlocutory orders is one which is not a suitable subject for review by the Federal Court The question whether one person or the other should be appointed as receiver cannot ordinarily be of any great practical importance. Accordingly such a case is not a fit one for the granting of a certificate for appeal to the Federal Court

The Advocate-General (*K Rajah Aiyar*) and *A Achuthan Nambiar* for Petitioner.

O T G Nambiar, D A Krishna Variar and *M. K. Nambiar* for Respondents.

K S ——— *Petition dismissed*

Horwill and Balakrishna Ayyar, JJ Rangaraju Naidu *v* Keymer & Co , Ltd.
31st August, 1949 O. S. A No 52 of 1949.

Original Side Rules (Madras High Court), Order 9, *rule* 6—*Summary suit —Question whether unconditional leave to defend should be granted or not—Materials that can be considered*

It cannot be said that one should decide the question as to whether leave to defend unconditionally should be granted or not, upon a consideration of the pleadings only The Court can take into consideration the circumstances of the case as disclosed in the plaint and in the affidavits and other material that is available

N S Raghavan for Appellant

B V Ramanarasu and *M L. Nayak* for Respondent

K S ——— *Appeal dismissed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ Suryanarayanamurthy *v.* Venkayya Pantulu.
31st August, 1949 A.A A O No 555 of 1947.

Hindu Law—Guardian of property appointed by Court when joint family consisted only of two minors—Elder of such minors attaining majority—Right to possession of joint family properties without furnishing security

Where all the members of a joint Hindu family are minors, the Court has power under the Guardians and Wards Act to appoint a guardian of the property

in case there are no adult male members One of such minors on attaining majority is entitled to the resumption of the entire property and he could act as the natural guardian of the remaining minor not as the certificated guardian In such circumstances the m jor applying for possession ought not to be directed to furnish security before he recovered possession of the joint family properties

[Authorit es reviewed]

P Satyanarayana Raju and M B. Ramasarma for Appellant

Respondent not represented.

K S ——— *Appeal allowed.*

Rajamannar, C J and Krishnaswami Naidu, J Adimoola Nadar *v* Ranganathan.
2nd September, 1949. C M P No 3114 of 1949.

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *section* 7 (2) (ii) (a) —*Tenant allowing a stranger to keep baskets of vegetables in the house for a small fee per basket—If sub-letting entitling the landlord to evict.*

Where a tenant allowed a vegetable merchant to keep baskets of vegetables in a room in the premises on payment of a small fee for each basket, there is no sub-letting of the premises or any portion thereof. If at all the merchant was only a licensee and as there was no sub-letting, the landlord is not entitled to evict the tenant.

T. L. Venkatarama Aiyar and *M Ramachandran* for Petitioner.

N Nagaraja Rao for 1st Respondent.

K.S. ——— *Application allowed.*

Mack, J Venkatachalapathi *v* The Province of Madras represented
2nd September, 1949. by the Collector of Guntur.
C R P. No 1634 of 1948.

Court-Fees Act (VII of 1870), *Schedule I, Article* 12 *(Madras)—Succession certificate —Application for—Stamp duty payable on the aggregate and not on the individual debts specified in the certificate*

The aggregate of the debts and securities specified in the certificate must determine the stamp duty payable under Article 12 (Madras) of Schedule I of the Court-Fees Act It cannot be said that such duty is payable on the individual debts only.

A I R 1947 Bom 30 and I L R 60 Cal 1262, followed

10 Luck 196, not followed

Neti Subramaniam for Petitioner

The Government Pleader (*K Kuttikrishna Menon*) for Government.

K S ——— *Petition dismissed.*

Basheer Ahmed Sayeed, J. Srinivasa Mudaliar *v.* Abraham Pillai.
2nd September, 1949.
C R P No 1392 of 1948

Civil Procedure Code (V of 1908), *section* 115—*Dismissal of petition to be added as legal representative of appellant—Dismissal of petition as well as of the appeal as abated—Petition to revise order refusing to add as legal representative—Maintainability*

Transfer of Property Act (IV of 1882), *section* 6 (*e*)—*Scope—Interest of testator in a partnership—Is existing interest and tangible property and does not come within the purview of section* 6 (*e*).

A revision petition lies against an order refusing to bring the petitioner on record as legal representative of the appellant, though the petitioner has not preferred an appeal against the order of abatement of the appeal

An interest in a partnership is nothing but an existing interest and tangible property which can be assigned and it does not attract to itself the mischief of section 6 (*e*) of the Transfer of Property Act An assignee of such interest under a will can apply to be added as the legal representative of the testator in an appeal by the testator relating to such partnership

R Sundaralingam for Petitioner

A Dorairaj for Respondent

K.S. ——— *Petition allowed.*

Mack, J — Narayanamma v Masthan Reddi.
6th September, 1949 — S A No 1413 of 1946.

Hindu Married Women's Right to Separate Residence and Maintenance Act (XIX of 1946), section 2 (4)—Scope—" If the husband marries again"—Interpretation—Re-marriage prior to the new Act—Effect.

The dominant intention of the new Act, XIX of 1946, is to give all wives a right of separate residence and maintenance against their husbands who have married again either prior or subsequent to the Act The Act does not seek to make an invidious distinction between wives whose husbands had married again prior to the Act and those whose husbands marry again after the Act and to give the former in perpetuity no right to separate maintenance against their husbands on the ground of re-marriage The Act is not retrospective so far as any separate maintenance prior to 23rd April, 1946, when the Act came into operation is concerned.

G C Venkatasubba Rao and *Ch Suryanarayana Rao* for Appellant

R Ramalinga Reddi for Respondent

K S. ——— *Appeal allowed. Leave granted.*

Raghava Rao, J — Ramayya *v* Venkatasubba Rao.
6th September, 1949 — A A O. No. 107 of 1948.

Partition Act (IV of 1893), section 4—Scope and applicability

There must be a suit at the instance of a transferee of a share of a dwelling house for partition and then, if any member of the family being himself a share-holder in respect of the dwelling house, undertakes to buy the share of the trans-feree plaintiff the Court shall make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such share-holder.

46 Bom 341 relied on

A I R 1929 Cal 269 and A I R 1937 Nag 4, distinguished

M S. Ramachandra Rao and *M. Krishna Rao* for Appellant

Y. Suryanarayana for Respondent

K S. ——— *Appeal allowed Leave refused.*

Somasundaram, J — Shah Jagrupji Maganlal, *In re.*
8th September, 1949 — Crl R. C No 836 of 1948.
(Crl M P. No 786 of 1948)

Cotton Cloth and Yarn Control Order (1945) and Madras Essential Articles Control and Requisitioning Act (1946)—Offence under—Sanction to prosecute—Necessity to set out facts constituting the offence

It is plainly desirable that the facts constituting the offence should be referred to on the face of the sanction and if the facts constituting the offence charged are not shown on the face of the sanction itself, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. Without these, the sanction will be invalid and in the absence of a proper sanction, a conviction and sentence for the offence cannot be maintained

(1948) 1 M L J 243 (P C), relied on.

M. Balachandrudu for Petitioner

The Assistant Public Prosecutor (*A S Sivakaminathan*) on behalf of the Crown

K S. ——— *Petition allowed.*

Somasundaram, J — Ahmed Abdul Sukkoor *v.*
9th September, 1949 — Vallabhadas Kanji Firm.
C R P No 1429 of 1948.

Civil Procedure Code (V of 1908), section 151—Scope —Court—Not restricted to High Court—Inherent power to order stay to avoid conflicting decisions

The word " Court " used in section 151 of the Code of Civil Procedure is wide enough to include any Court under the Code The power to order stay under the section is not restricted to the High Court alone It cannot be said that such powers can be exercised by the High Court only in the course of proceedings pending before it

R. Rangachari for Petitioner.

Respondent not Represented.

K S. ——— *Petition dismissed.*

Somasundaram, J. Mallick, *In re*
14th September, 1949 Crl M P No 2244 of 1949.

Extradition Act (*XV of* 1903), *sections* 3 *and* 9—*Scope—Requisition of Mysore State—Procedure*

There is no political agent now in Mysore Therefore section 9 of the Indian Extradition Act applies when the requisition of the State is under section 9 of the Act, which attracts the provisions of section 3 of the Act The Magistrate to whom the requisition is made must follow the provisions of section 3 of the Act

B T Sundararajan and S Krishnamurthi for Petitioner

K Veeraswami for The Advocate-General (*K Rajah Aiyar*) and *G Gopinath* for the Crown Prosecutor on behalf of the Crown

K S ——— *Proceedings quashed*

Somasundaram, J Subrahmanyam, *In re.*
14th September, 1949. Crl R C No 1159 of 1948.
(Crl R P No 1099 of 1948)

The Essential Supplies (*Temporary Powers*) *Act* (*XXIV of* 1946), *section* 3 (2) (c) —*Collector notifying controlled price of salt in District Gazette—Sale at a higher price—If offence*

Under section 3 (2) (*c*) of Central Act XXIV of 1946, the fair price has to be fixed by Notified order Notified order has been defined in the Act as an order notified in the Official Gazette which under the General Clauses Act means the *Gazette of India* or as the case may be the Gazette of a Province In this Province the Official Gazette is the *Fort St George Gazette* Accordingly, where a notification is published in a District Gazette (without any publication of the same in the *Fort St George Gazette*) fixing the fair price of salt at Rs 3-4-7 a bag and a person sells a bag of salt of at Rs 5-4-0 he cannot be convicted for an offence under such notification

K S Jayarama Aiyar and *C K Venkatanarasimham* for Petitioner.

The Assistant Public Prosecutor (*A. S Sivakaminathan*) for the Crown

K S ——— *Petition allowed.*

Somasundaram, J Gannon Dunkerley & Co , *In re.*
14th September, 1949 Crl R C No 1223 of 1948.
Cr.R P No 1161 of 1948

Motor Vehicles Act (*IV of* 1939), *sections* 42 *and* 123—*Permit for lorry to carry building materials—Carrying furniture from one place to another—If offence*

Where in a permit for a lorry the conditions do not restrict its use for the carrying of building materials only, the carrying of some furniture in it cannot be said to be a violation of the conditions of the permit The mere admission of the fact of carrying the furniture cannot amount to a plea of guilty to a charge of the offence contravening the conditions of the permit.

T S Padmanabha Ayyar for Petitioner.

G Gopinath for the Crown Prosecutor on behalf of the Crown.

K S. ——— *Conviction set aside.*

Somasundaram, J. Ismail, *In re.*
15th September, 1949 Crl M P No 2286 of 1949.

Madras Prohibition Act (*X of* 1937), *section* 13—*Person who hired a cycle from its owner, riding the cycle with a tin of arrack, convicted for being in possession of arrack—Confiscation of cycle not warranted*

A person who hired a cycle was convicted for being in possession of arrack He was riding on the cycle with a tin containing a gallon of arrack In the circumstances it cannot be said that the owner of the cycle had anything to do with the possession or transport of arrack or that his cycle was used for the purpose of transporting the arrack An order confiscating the cycle ought not to be passed as the circumstances do not fall within the scope of section 13 of the Madras Prohibition Act

A A S Mustafa for Petitioners

The Assistant Public Prosecutor (*A S Sivakaminathan*) on behalf of the Crown

K S ——— *Petition allowed.*

Mack, J Parameswaran Nambudripad *v.* Narayanan.
22nd August, 1949 C R P. No 914 of 1948.

Madras Temple Entry Authorization Act (V of 1947), *section* 6—*Scope and object of—Reference to Provincial Government as to whether a place is a temple as defined in the Act—Who is bound to make reference—Suit if barred*

Section 6 of Madras Act, V of 1947, does not cast on the Court in which a suit is filed to enforce rights created by the Act, any obligation to stay such a suit and make a reference to the Provincial Government to decide whether the place in dispute is or is not a " temple " The section lays a mandatory obligation on the parties concerned in a dispute, as to whether a place is or is not a temple, to refer it first to the Provincial Government and is designed to give the parties affected an easy remedy free from court-fee and to assist them in the enforcement or resistance of rights claimed under the Act without compelling them to go to Court. Section 6 will not be a bar to the maintainability of a suit for the purpose.

N Sundara Aiyar for Petitioner

Respondent not represented

K S. ——— *Petition dismissed*

Horwill, J Pattabhiramayya *v* Malla Reddy.
26th August, 1949 C R P No 1685 of 1947.

Civil Procedure Code (V of 1908), *section* 21—*Decree passed by a Court without territorial jurisdiction—Question as to jurisdiction cannot be raised in executing Court.*

A person against whom a decree has been passed in a Court which had no territorial jurisdiction must raise the matter by way of an appeal or in revision If he does not do so, he cannot raise the matter in execution or by way of collateral proceedings

I.L.R 43 Mad 675, relied on

(1946) 1 M L J 287, distinguished.

M Subramanya Sarma for Petitioner.

Respondent not represented

K S ——— *Petition allowed.*

Satyanarayana Rao and Basheer Ahmed Sayeed, JJ Surayya *v* Kondamma.
7th September, 1949 Appeal No 343 of 1946.

Registration Act (XVI of 1908), *sections* 35 *and* 77—" *Admission of execution* "—*Essentials*

The admission required under section 35 of the Registration Act is admission of execution of the document It may be a sale deed, it may be a mortgage deed It is not enough for the person, who is the ostensible executant, to admit his signature on a paper on which, it may be, the document is ultimately engrossed. The identity of the paper on which the signature occurs is not sufficient. If a man says that he signed a blank paper on the representation that it was required for presenting a petition, or if he signed a completed document on the representation that his signature or thumb impression is required as an attesting witness, that admission of the signature or thumb impression in those circumstances cannot be construed to be an admission of the execution of the document. Far from its being an admission, it is a clear and unambiguous denial of the execution of the document He must admit in order to attract the provisions of section 35 (1) of the Registration Act that he signed the document, *viz* , a sale deed or a mortgage deed or a lease deed as the case may be

(1949) 1 M L J. 479, dissented from Case-law discussed.

The same considerations should guide the Court in directing registration under section 77 which guide also the Registrar.

V Parthasarathi for Appellant.

P Satyanarayana Raju for Respondent

K.S. ——— *Appeal dismissed.*

N R C

Mack, J. Pedda Chinniah *v* Mahaboob Bee.
9th September, 1949. C R.P. No 1699 of 1947.

Landlord and tenant—Lease of land for cultivation—Expiry—Tenant if bound to formally surrender possession

Where the fields leased are open fields on which there was no homestead or any moveable property to be surrendered there is no necessity for any ceremony of giving and taking. All that the landlord had to do was to enter on the land after the expiry of the lease and take possession either by himself or by a new lessee. The sole criterion for finding out whether a lessee was holding over in such a case is whether he did or did not cultivate the lands as a tenant holding over If he did not cultivate he cannot be made liable as tenant holding over merely because there was no surrender by him

K Kameswara Rao and *V Sethumadhava Rao* for Petitioner.

K Umamaheswaram for Respondent

K.S. ——— *Petition allowed*

Satyanarayana Rao and Basheer Ahmed Sayeed, JJ. Subramaniam Chettiar *v.*
12th September, 1949 Raja Shanmuga Rajeswara Setupathi
Appeal No. 307 of 1946

Limitation Act (IX of 1908), *section* 28 *and Article* 47—*Scope and effect.*

A person who is unsuccessful in a proceeding under section 145, Criminal Procedure Code, has to institute a suit under Article 47 of the Limitation Act within a period of three years from the date of the final order and the object of the suit is to recover the property comprised in such order The order declaring possession of the other party is conclusive and the unsuccessful party cannot be heard to say that that order is wrong and that he is not bound to sue to recover possession of the property. If the suit is not filed within the period of limitation, under section 28 of the Limitation Act his right to such property is extinguished. The extinguishment of the title is not merely against the particular person ; the extinguishment is of the title of the claimant to that particular property. Even a stranger to the proceedings under section 145 of the Criminal Procedure Code will be entitled to successfully plead that the unsuccessful claimant's title had become extinguished by his omission to institute a suit within three years.

I L R 14 Pat 424, relied on

48 M.L J. 372, distinguished

S. Ramachandra Aiyar for Appellants

T. B. Balagopal for Respondent

K.S. ——— *Appeal allowed.*

Somasundaram, J Narayanaraju, *In re.*
15th September, 1949. Cr R C No 850 of 1948.
Cr R P No 802 of 1948.

Criminal Procedure Code (V of 1898), *sections* 350 *and* 526 (8)—*Judgment written and signed by Magistrate while he was in office—If can be pronounced by his successor—Application for adjournment to enable application to be made to High Court for transfer—Stage at which can be made—Closing of defence case—When takes place*

A judgment written and signed by a Magistrate while he was in office can after his transfer be pronounced by his successor. There is nothing illegal or irregular in the judgment so delivered. Where an accused after "the defence *closes its case*" (*i e.*, completes the defence evidence) applies for adjournment to enable the applicant to move the High Court for a transfer of the case, the Court is not bound to grant the adjournment as the provisions of section 526 (8) of the Code of Criminal Procedure does not apply to an application made at that stage. Whether he should act on the evidence recorded by his predecessor or hold a *de novo* trial is a matter in the discretion of the succeeding magistrate

V T. Rangaswami Ayyangar and *P. S S. Rama Rao* for Petitioner.

The Public Prosecutor (*V L Ethiraj*) on behalf of the Crown.

K.S. ——— *Petition dismissed.*

Chandra Reddi, J.
15th September, 1949

Shah Shantilal & Co. *v.* Shiborwalla.
C R.P. No. 1639 of 1948.

Limitation Act (*IX of* 1908), *Article* 164—*Suit to set aside* ex parte *decree—Commencement of limitation.*

Substituted service of summons is as effectual as if it had been made on the defendant personally and where an *ex parte* decree is passed against such defendant time ran from the date of the decree even though the defendant had no knowledge of the passing of the decree A suit filed beyond thirty days of such decree will be barred by limitation.

Y Balakrishnayya for Petitioner

Messrs Subramanyam and Rajagopal for Respondent

K S *Petition dismissed.*

Rajamannar, C J and Krishnaswami Nayudu, J.
16th September, 1949

Raja Chetty *v* Jagannathadas Govindas.
C M P. No 5615 of 1949.

Madras Buildings (*Lease and Rent Control*) *Act* (*XV of* 1946), *section* 7 (2)—*Registered lease after commencement of Act—Provisions as to default and eviction—Lease if governed by the Act.*

A lease of a Cinema Theatre with furniture fittings, talkie equipment machinery, etc, was entered into by a registered agreement after the commencement of Madras Act XV of 1946

In an application for eviction under section 7 (2) of the Act for default in payment of a month's rent on the due date,

Held The provisions of Madras Act, XV of 1946, would not apply to the lease in question. The parties must be presumed to have known of the provisions of the Act and contracted out of the terms of the Act The landlord must by the agreement be deemed to have waived the right to evict conferred by the Act Further the Act is not applicable as the lease is not one of a mere building and furniture only Accordingly an eviction cannot be ordered under the Act.

V Radhakrishnayya and *V S Rangachari* for Petitioner

K V Ramachandra Ayyar and *A. Arunachalam* for Respondents

K S *Petition allowed.*

Raghava Rao, J
16th September, 1949.

Rasa Goundan *v.* Ramai Goundan.
S A. No 1790 of 1946.

Madras Hindu Religious Endowments Act (*II of* 1927), *section* 44-*B—Order of District Collector dismissing as withdrawn an appeal preferred by the respondent against the order of the Collector acting under section* 44-*B of the Act—Suit by respondent for declaration that inam consisted of both warams—Barred*

Within six months of an order of the District Collector dismissing as withdrawn an appeal preferred by the defendant against an order of the Collector acting under section 44-B of the Madras Hindu Religious Endowments Act holding that the suit inam consisted only the melwaram, the defendant filed a suit for a declaration that the inam consisted of both the melwaram and kudivaram

Held: The defendant had no reasons to be aggrieved by the order of the District Collector procured by him on an express invitation by himself. The suit does not lie.

G. Chandrasekhara Sastri for Appellant

T E Ramabhadrachariar and *K V. Ramachandra Aiyar* for Respondent.

K S *Appeal allowed Leave refused.*

Rajamannar, C J and Chandra Reddi, J.
4th October, 1949.

Hussen & Co., Madras *v.* The Collector of Madras.
C M P No 3998 of 1949.

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *section* 3 (2)—*Collector taking possession of premises under section* 3 (2)—*Order not one which can be quashed by the High Court in* certiorari

The order of the Collector under section 3 (2) of Madras Act, XV of 1946, taking possession of a premises for Government purposes is not a judicial order, nor is the purported act of the Collector a judicial act Such an order cannot be brought up before the High Court in *certiorari*

P Srinivasa Iyengar for Petitioner

K Veeraswami for the Advocate-General for the Government Solicitor for the Respondent

K S ——— *Application dismissed.*

Panchapakesa Ayyar, J
4th October, 1949

Veradi Goundan and others, *In re.*
Cr M P No 2342 of 1949

Criminal trial—Framing of charges—Quashing—When proper

A Court frames a charge on the evidence before it, and proceeds to trial Eventually it will either convict or acquit the accused when they can have their appropriate remedies of appeal or revision When there is nothing illegal in the matter of framing the charge, and the only question of merits in framing the charge on the evidence on record is involved, it will be highly inadvisable to go into the *merits* regarding the framing of the charge against some of the accused, and stay the proceedings in the whole case.

K Kuppuswami for Petitioners

K S ——— *Petition dismissed.*

Panchapakesa Ayyar, J.
5th October, 1949

The Indian Sugar and Refineries, Ltd. *v* Malaiperumal Pillai.
C M P Nos 5559 and 5560 of 1949

Insolvency—Suit by insolvent for recovery of damages for breach of contract—Dismissal—Official Assignee financing insolvent for conduct of the suit—If "intervenes" in the suit so as to be liable for the costs of the suit.

Where the Official Assignee finances the insolvent for the purpose of getting a decree against a stranger and benefiting the insolvent's estate in the hands of the Official Assignee and but for which financing the insolvent might never have been able to prosecute the suit, the Official Assignee must be held to have effectively "intervened and interfered" in the suit The mere fact that the insolvency Court ordered the Official Assignee to pay the amount to the insolvent for the purpose of carrying on the litigation for the benefit of the insolvent's estate in the hands of the Official Assignee will not affect either the *factum* of the Official Assignee's intervention or interference in the suit, or his legal liability, at least to the extent of the assets of the insolvent's estate in his hands, for the costs awarded in the suit which he had financed and hoped to succeed in for the benefit of the estate The absence of any bad motive on the part of the Official Assignee is immaterial The Official Assignee can be ordered not to disburse funds in his hands till disposal of an appeal by an insolvent against the dismissal of the suit and the determination of the liability for costs

V. K Thiruvenkatachari, N V B Shankar Rao and *G. Vasantha Pai* for Petitioner.

N T. Raghunathan for the Official Assignee.

M. E Ragagopalachari and *V Veeraraghavachari* for Respondent

K.S. ——— *Order accordingly.*

Krishnaswami Nayudu, J. T. A. Menon *v* Parvathi Ammal.
2nd September, 1949 C R P No 1349 of 1948.

Madras Marumakkattayam Act (XXII of 1933), sections 6 and 7 (1)—Marriage celebrated at a place in West Bengal—Petition for dissolution in Court within whose jurisdiction the respondent had a permanent dwelling—Jurisdiction

Practice—Subordinate Court of one Province—If can order stay of suit pending between the parties in a Court subordinate to another High Court of a different Province

Although a marriage was celebrated in a place outside the jurisdiction of the Court if the respondent has a permanent dwelling within the local limits of the jurisdiction of the Court a petition for dissolution of the marriage under the Madras Marumakkattayam Act can be presented in such Court It will be enough for this purpose if it is shown that the respondent has a tarwad or paternal home or his own home within the jurisdiction of the Court in which the petition is filed. Actual residence at the time need not be shown

Where a petitioner for dissolution of marriage alleges that a valid marriage with the customary ceremonies was performed, the factum of such ceremonies must be proved and in the absence of such proof it cannot be said that a valid marriage under the Act was performed to entitle the petitioner to claim dissolution.

It is doubtful whether an order under Order 39, rule 2 of the Civil Procedure Code issued against a party would be binding on a District Munsif subject to the jurisdiction of another High Court situated in a different Province so as to compel him to stay further trial of a petition for dissolution Such an order is no bar to the continuance of the trial of the petition for dissolution.

V Ramaswami Aiyar, M V Ganapathi and *P C Sarangapani* for Petitioner

V Rajagopalachari and *A Achuthan Nambiar* for Respondent

K S ——— *Order set aside and case remanded.*

Rajamannar, C J and *Krishnaswami Nayudu, J* Boralingiah *v* Narayana Gounder.
7th September, 1949 Appeal No 277 of 1946.

Tort—Malicious prosecution—Suit for damages—Onus

It is true that in an action for malicious prosecution the plaintiff has to establish absence of reasonable or probable cause and malice It is also true that the burden shifts after the plaintiff has let in *prima facie* evidence in support of his case But the question of onus assumes quite a different character when the plea of the defendant is not a mere denial of the allegation of the plaintiff that the complaint was made without reasonable or probable cause but further, that the offence with which the plaintiff was charged are true to the knowledge of the defendant In such a case it is incumbent on the Court to look at the entire evidence adduced in the case on either side and decide whether or not the defendant's version, namely that he actually and directly was aware of the commission of the offence by the plaintiff can be accepted I L R 50 All 713 at 717 referred

When the complaint is false to the knowledge of the complainant not only is want of reasonable and probable cause proved but malice also is proved

V Ramaswami Aiyar for Appellant

Messrs Pais, Lobo and *Alvares* for Respondent

K S ——— *Appeal allowed.*

Rajamannar, C J and *Krishnaswami Nayudu, J.* Muhammad Amin Sahib *v*
9th September, 1949 Tiruvannamalai Co-operative Society.
S.A. No. 1345 of 1945 and A A A O No 28 of 1946.

Madras Co-operative Societies Act (VI of 1932), section 57-A—Application to Registrar to recover money payable to society under a decree—Transfer of decree to the Registrar by the Court which passed it under section 39, Civil Procedure Code—If essential

A Registrar of Co-operative Societies acting under section 57-A of the Madras Co-operative Societies Act, 1932, cannot be treated as a Court within the meaning of section 39 of the Civil Procedure Code and a decree-holder applying to the Registrar to recover moneys payable under a decree of a Civil Court need not get a transfer of the decree to the Registrar The proceedings taken by the Registrar under section 57-A of the Act may be of the same nature and may have the same result but they are not execution proceedings in a Civil Court governed by the Civil Procedure Code.

N R C

Kuppuswamy v. *Krishnaswamy*, (1949) 1 M.L J. 199, approved.

T. R. Arunachalam for Appellant in S A. No 1345 of 1945 and Respondent in A.A.A.O. No 28 of 1946.

The Advocate-General and *P K. Janakiram* for Respondent in S A No. 1345 of 1945 and Appellant in A A.A O. No 28 of 1946

K.S. *Appeal dismissed.*

Horwill, J. Balakrishna Ayyar *v* Veeranan Servai.

16th September, 1949. C R P. No 1293 of 1949.

Specific Relief Act (I of 1877), *section* 9—*Suit under—If mantainable when property is in* custodia legis *under an order under section* 145 *of the Criminal Procedure Code*

The plaintiff a co-owner claimed that he was in exclusive enjoyment of property as the defendants his other co-owners had leased the property to him He was disturbed in his possession by the co-owners and he filed a petition under section 145, Criminal Procedure Code, and as a result of the enquiry the Magistrate was unable to say who was in possession. He therefore attached the property and put it in the possession of the local Tahsildar directing the parties to file a civil suit Instead of filing a regular suit, the plaintiff filed a suit under section 9, of the Specific Relief Act within six months of the date when, according to him, he was dispossessed by his co-sharers.

Held : The mere order under section 145 of the Criminal Procedure Code was not sufficient to deprive the plaintiff of the right to relief in a suit under section 9 of the Specific Relief Act where the plaintiff relies on his dispossession on a date prior to the proceedings under section 145 which up to the time of the filing of the suit had kept him out of possession.

30 All. 331, followed. 7 C L.J. 331, distinguished. 43 I.C. 153, not followed.

N. T. Ramanujam and *N. T. Raghunathan* for Petitioner.

K S. *Petition dismissed.*

Satyanarayana Rao and *Basheer Ahmed Sayeed, JJ.* Kalyanam Veerabhadrayya, *In re*

10th October, 1949. Cr M P No 1529 of 1949

Madras Maintenance of Public Order Act (I of 1947), *section* 1 (4)—*Life of—Extension for one year from 12th March*, 1948, *by Notification of 27th February*, 1948—*Validity—Madras Ordinance (I of* 1949)—*Validity and effect*

The Madras Maintenance of Public Order Act, 1947, ceased to have operation and died a natural death on the 11th March, 1948 The bare power of extension of the life of an act is a legislative power and not a matter of mere administrative discretion and such power to extend cannot be delegated by the legislature to the Executive Government [Distinction between delegation of power to make the law and conditional legislation discussed]

Jatindra Nath Gupta v. *Province of Bihar*, 1949 F L J 225 (1949) 2 M.L J 356 (F.C), relied on.

A I R 1948 All 414 and A I R. 1948 All. 435, dissented from.

Madras Ordinance I of 1949 promulgated by the Governor on 11th August, 1949, cannot have the effect of amending Madras Act I of 1947, which had ceased to exist. Sections 2, 3 (*a*) and section 4 (which purports to insert a new section 4-A) of the Ordinance are of no effect, as they do not purport to enact or revive a new law but only seek to amend or clear doubts in the old Act Section 3 (*b*) of the Ordinance however is an enacting provision and it retrospectively validates actions, proceedings, notifications and orders made under the Act at any time on or after 12th March, 1948 Such a power of validation is recognised by Courts in India and the Privy Council Section 3 (*b*) of the Ordinance is valid and operative

N S. Mani for *Messrs Row* and *Reddy* for the Petitioner

The Advocate-General (*K Rajah Ayyar*) instructed by *N T Raghunathan* for the Public Prosecutor on behalf of the Crown

K.S. *Order accordingly on the preliminary point.*

Raghava Rao, J Jayanabibi *v.* Jayarabibi.
12th September, 1949 S A No 848 of 1947.

Mahomedan Law—Settlement by husband in favour of wife of property in the hands of tenants—Absence of delivery of possession to wife—Effect—Mere recital of delivery of possession—If sufficient.

A Mahomedan executed a deed of settlement in favour of his wife of property in the hands of tenants Under it the settlor reserved to himself the right to receive rents during his life-time and he also undertook to pay the municipal taxes. Though it was stated in the document " I have delivered possession of the property to you even now " it was not followed up by any attornment of the tenants to the donee or by any reception of rents and profits by her.

In the cirsumstances,

Held, that the settlement will be of no avail to the wife for want of delivery of possession under it A I R 1932 (P.C) 13, distinguished The question whether or no possession was delivered is in essence a question of fact and when there is a concurrent finding in the courts below it cannot be interfered with in second appeal

Y Suryanarayana for Appellant.

G Venkatarama Sastri for Respondent.

K S *Appeal dismissed Leave refused.*

Krishnaswami Nayudu, J Amaravathamma *v* Chinna Venkata Reddi
4th October, 1949 C. R P. No 1210 of 1946

Practice—Suit by next friend of a minor to set aside compromise decree in an earlier partition suit as not binding—Suit decreed and matters in issue in the prior suit tried and preliminary decree passed—No need to revive the earlier suit

Where in a suit by the next friend of a minor to set aside as not binding on the minor a compromise decree in an earlier partition suit in which the minor was one of the defendants, a declaration in favour of the minor is given and the matters which have been in issue in the previous suit have been tried and a preliminary decree has been passed in the minor's suit, there is no necessity nor any justification for the Court for reviving the earlier suit and allowing it to be tried

S V Venugopalachari and *C V. Dikshitulu* for Petitioner.

K. S Desikan for Respondent.

K S. *Petition dismissed.*

Krishnaswami Nayudu, J Ayyammal *v* Thangavelu Padayachi.
6th October, 1949 A A A O. No 90 of 1949.

Civil Procedure Code (V of 1908), *Sections* 47 *and* 151*—Delivery of property in contravention of stay order—Application for re-delivery of property—Appeal against order on—Maintainability*

It cannot be said that an application to direct re-delivery of a property delivery of which was ordered in execution of a decree could be said to be not one relating to the execution of a decree In any event such application is maintainable under section 151 of the Code of Civil Procedure and an appeal lies from an order dismissing such application

Where after a stay of execution with notice an order for delivery of possession is made at the instance of a party who must be deemed to be aware of the stay order, the order for delivery of possession cannot be allowed to stand

K S Desikan and *T. R. Ramachandran* for Appellant.

S Amudachari for Respondent

K S. *Appeal dismissed. Leave refused.*

Rajamannar, C.J. and *Krishnaswami Nayudu, J.*
7th October, 1949

Satyanarayana *v.* Bullivenkayya.
Appeal No. 163 of 1946.

Hindu Law—Gifts—Joint family—Father or Manager—If can convey portion of property to his daughter or daughter of another coparcener as a marriage portion—Test of reasonableness of portion conveyed.

According to the principles of Hindu Law, a father or a manager of a joint family can convey a reasonable portion of the family property as a marriage portion to his daughter or to the daughter of another coparcener Such a gift would be in discharge of a moral obligation which continues even after the date of the marriage.

71 M L J 259; 22 Mad. 113; 22 M L J. 321 and Mayne's Hindu Law, 10th edition, section 370, relied on.

The question whether a particular gift is reasonable or not cannot be decided by any rule of thumb It cannot be held that a particular proportion of the family property is always reasonable. It must be left to the Court to decide in each case whether the gift is reasonable in all the circumstances under which it is made.

Case-law reviewed.

M. S. Ramachandra Rao and *T. V R. Tatachari* for Appellant

A. Sundaram Aiyar, G C Venkatasubba Rao and *Ch. Suryanarayana Rao* for Respondents.

K S. *Appeal allowed.*

Govinda Menon, J.
7th October, 1949

Kandaswami Naick *v.* Ponnu Naick
S. A No. 1095 of 1947.

Madras Estates Land Act (I of 1908), *section* 112*—Absence of notice to ryot renders sale void.*

The service of notice on the ryot is an imperative condition precedent to the Collector appointing an Officer to conduct a sale for arrears of revenue under the Madras Estates Land Act A sale held without service of a proper notice is null and void If the sale is a nullity there is no duty cast upon the defaulters o bring a suit to set it aside

Case Law discussed I L.R. 26 Pat. 340 (F B.) distinguished

K. Bashyam and *R. Ramasubba Aiyar* for Appellant

R. Viswanathan and *T. R. Srinivasan* for Respondents

K.S. *Appeal dismissed. No leave.*

Krishnaswami Nayudu, J.
7th October, 1949.

Venkateswara Ettu Naicker *v* Ayyammal.
A A O No. 80 of 1947.

Civil Procedure Code (V of 1908), *Order* 21, *rule* 66*—Absence of proclamation as required by—Effect on sale—Application to set aside sale—Limitation*

It is no doubt not easy to draw the line between irregularity and illegality in an execution sale, but where a substantial provision of law has been violated as in the present case, Order 21, rule 66, Civil Procedure Code, the sale should be regarded as having been illegally conducted. The object of Order 21, rule 66 is to afford a security for the fairness of public sales, that it has been properly published and that it would attract purchasers But, if the specific provision as to proclamation is violated, there could be no doubt that the sale cannot be allowed to stand It cannot be said that the total failure to make the proclamation under Order 21, rule 66, is a mere irregularity in the publication or conduct of the sale, Such a sale will be illegal and void To an application to set aside such an illegal and void sale, Article 181 of the Limitation Act would be applicable, *i e.*, three years from the time when the right to apply accrues. Article 166 would have no application.

V. Ramaswami Aiyar and *R. M Halasyam* for Appellant.

T. K Subramania Pillai for *A C. Sampath Aiyangar* and *M Natesan* for Respondents

K.S. *Appeal allowed. Leave refused.*

Satyanarayana Rao and *Basheer Ahmed Sayeed, JJ.*
11th October, 1949.

Narasimhamurthy, *In re.*
Cr M.P. No. 1527 of 1949.

Madras Maintenance of Public Order Act (I of 1947), section 2 (1)—Member of Communist Volunteer Corps "training youths in drill and parade exercises with lathis, holding classes spreading revolutionary ideas and creating class hatred"—If sufficient ground for detention

Mere training of youths in drill and parade exercises, with lathis, etc, and holding classes is not a subversive activity and would not justify detention under Madras Act I of 1947 of a member of the Communist Volunteer Corps taking part in such organisation. It is not an activity calculated to endanger public safety or the maintenance of public order. A ban imposed under section 16 of the Criminal Law Amendment Act subsequently on the Communist Volunteer Corps has not the effect of converting the activity of the member, if any, before the ban imposed by the Government, retrospectively into an activity of the kind contemplated by section 2 (1) of Act I of 1947 If the member continues to be a member of an association which has been declared unlawful, punishment is provided for it under section 17 of the Criminal Law Amendment Act.

N. S. Mani for *Messrs Row* and *Reddy* for Petitioner

N T. Raghunathan on behalf of the Crown

K.S.

Petition allowed.

Rajamannar, C J. and *Chandra Reddi, J*
13th October, 1949

Venkataseshamma *v.*
Ranganayakamma
C. M. P No 4404 of 1949.

Practice—Filing of appeal with patently deficit Court-fee—Appellant's inability to secure enough money for payment of full Court-fee—If ground for excusing delay—Grant of time to pay deficit by admission Court—Right of other side to question

A party who did not have the means to pay the Court-fee on an appeal should, if so advised, file the appeal in *forma pauperis* The practice of filing an appeal with a patently deficit court-fee simply because before the last date of filing the appeal the appellant is unable to secure enough money for payment of the full court-fee and then taking time to raise the deficit amount and getting the delay excused as a matter of course cannot be tolerated

Where the delay is excused by a judge sitting in the Admission Court without notice to the other side, it is assumed that the other side would be always at liberty at a subsequent stage or even at the hearing of the appeal to contend that the delay should not have been excused. It cannot be said that the only course for the other side was to file a review application

51 M L J. 90, referred ; 1 L W. 440, approved.

It is desirable that notice should be given in such cases to the other side to obviate inconvenience and expense which might be avoided if the Court were to eventually refuse to excuse the delay,

T. E. Ramabhadrachariar and *Ch. Suryanarayana* for Petitioner.

R Ramamurthi for respondent.

Respondent directed to furnish security.

Panchapakesa Ayyar, J
13th October, 1949.

Calicut Hosieries, *In re.*
Cr R C No. 1222 of 1948.
(Cr R. P. No. 1160 of 1948).

Industrial Disputes Act (XIV of 1947), sections 23, 24 and 26 (2)—Reference of dispute to tribunals vague, general and so invalid—Lock-out by the management after such reference—If illegal and offence—Madras Act (XII of 1940), section 5—Validating references—If renders lock-out illegal

Where a reference by the Government to an Industrial Tribunal is too vague and general and invalid, the "lock-out" by the management and directors of a

firm involved in the dispute cannot be said to be illegal and their conviction under sections 23 and 24 of the Industrial Disputes Act (XIV of 1947) read with section 26 (2) will not be sustainable. Madras Act XII of 1940, section 5 has not got the effect of making the lock-out illegal retrospectively by validating such references. The fact that the lock-out was committed before the High Court decisions holding such general and vague references invalid will not make them liable

B. V Subramanyam for Petitioners

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) for the Crown

K S. *Convictions and sentences set aside.*

Satyanarayana Rao, J., on difference of opinion between *Horwill* and *Balakrishna Ayyar, JJ.* — Lakshminarayana, *In re* Cr M P No. 1536 of 1949

19*th October*, 1949.

Madras Maintenance of Public Order Act (*I of* 1947)—*Clandestine purchase and import of explosives and smuggling them to communist camps in Hyderabad State—If justifies detention—Acts constituting grave offence under Explosive Substances Act—Action under Act I of* 1947—*Bona fides*

Where the gravamen of the charge against a detenu as disclosed in the ground of detention was that he had been clandestinely purchasing and importing from outside sulphur graphite, saltpetre and potassium and smuggling them to communist camps in Hyderabad State, it cannot be said that such activity is calculated to endanger the public safety and maintenance of public order in this Presidency. Such a ground is entirely outside the purview of Act I of 1947 and an order of detention on that ground cannot be justified

The fact that the Government abandoned the intention of prosecuting the case initiated against the detenu under the Explosive Substances Act affords a basis for inferring lack of good faith on the part of the Government in detaining the person under Madras Act (I of 1947)

S Krishnamurthy for Petitioner

N T. Raghunathan for the Public Prosecutor.

K S *Petition allowed.*

Panchapakesa Ayyar, J. — Abraham, *In re.*

19*th October*, 1949 — Cr R C No 1035 of 1948. (Cr R P. No. 975 of 1948).

Penal Code (*XLV of* 1860), *section* 341—*Wrongful restraint—Gist of offence—*" *Proceeding in any direction* "—*Meaning*

A driver of a bus purposely made his bus stand across the road in such a manner as to prevent another bus which was coming from behind to proceed further. In a prosecution for wrongfully restraining the driver and passengers of the other bus,

Held The driver of the first bus was guilty of wrongful restraint The words " proceeding in any direction " in section 339 of the Penal Code must only mean proceeding in that direction and not in any other direction, much less in the reverse direction. It cannot be said that because the driver and passengers of the other bus could have got down from that bus and walked away in different directions or even gone in that bus to a different destination in the reverse direction there was therefore no wrongful restraint

(1946) 2 M L J 281 1946 M W N (Crl) 118, relied on , (1942) 2 M L J. 14 I L R 1942 Mad. 696, distinguished

S. Krishnamurthy and *Vepa P Sarathy* for Petitioner.

The Assistant Public Prosecutor (*A S. Sivakaminathan*) for the Crown.

K.S. *Petition dismissed.*

Viswanatha Sastri, J. Govindappa *v* Chayappa.
4th October, 1949. S A. Nos. 1474 and 2113 of 1946.

Madras Estates Land Act (I of 1908) *Section* 3 (11), 27 *and* 28—*Payment of rent at a particular rate for* 20 *years—Presumption—*Mera *charged as perquisites payable to hereditary village officers—Fishery fee and fee for use of landlord's thrashing floor and other amenities—If illegal levy*

A *mera* (payable as a perquisite to hereditary village officers) cannot be said to be in the nature of an illegal levy 27 Mad. 332 (336) relied on 69 M L J. 917 considered. The payment of *meras* having been made for a series of years and being connected with the agricultural economy of the village, it cannot be said that it is in the nature of an illegal levy.

Fishery rents are also deemed to be rent and realisable as such by the landlord

A ryot, who owing to the want of a thrashing floor of his own, uses the thrashing floor provided by the landlord is liable for a cess for the use of the thrashing floor 42 Mad. 197 (202) relied on.

Where for about 20 years a rent higher than what was paid in 1861 has been paid, it cannot be said that the rent so paid during those years was not fair within the meaning of section 28 of the Madras Estates Land Act Under section 27 of the Act a presumption arises that the ryot holds at the same rate and under the same conditions as he did in the preceding revenue year

Ch Suryanarayana Rao for Appellant

K Srinivasa Rao for Respondent

K S ——— *Appeals dismissed. No leave.*

Rajamannar, C J and *Chandra Reddi, J.* Madhava Rao *v.* Parthasarathi Rao.
5th October, 1949 Appeal No. 224 of 1946.

Hindu Law—Will—Construction—Bequest to sisters—Absolute or limited estate—Test.

A will provided *inter alia* —" All the properties mentioned in the schedule shall, after my death, be enjoyed by my mother, *M*, so long as she is alive After her death, the said properties shall be divided into four shares equally by my four sisters, namely, *A*, *B*, *C* and *D* and the same enjoyed and if any one of them does not have male or female *santhathi* her share shall after her death be divided and enjoyed by all the individuals who have issue in equal shares " On a construction of the will,

Held, each sister of the testator took a fourth share absolutely. The clause providing for the contingency of one of the sisters dying without male or female issue is void as repugnant to the earlier absolute disposition in favour of each of the sisters Where one of the sisters had an adopted son it cannot be said she was without issue (*santhathi*)

P Somasundaram and *M Dwarakanath* for Appellant

N Bapiraju and *C V Narasimha Rao* for Respondents

K S. ——— *Appeal allowed.*

Rajamannar, C J and Parisa Mudaliar *v* Nataraja Udayar
Krishnaswami Nayudu, J Appeal No 287 of 1946.
6th October, 1949

Hindu Law—Limited owner—Alienation to meet marriage expenses of daughter's son—If for legal necessity and binding on the reversioners

An alienation by a limited owner for the purposes of meeting the marriage expenses of a daughter's son will be binding on the reversioners irrespective of the circumstance whether the father was in a position or not to meet the expenses of the marriage, provided it is shown that the limited owner acted not with extravagance but with the best of motives.

N R C

67 M.L J. 204 I L R. 57 Mad. 772 relied on.

K. Parasurama Aiyar for Appellant.

T.M.Krishnaswami Aiyar, N. Sivaramakrishna Aiyar and *A. Balasubramania Aiyar* for 1st Respondent

K S. ——— *Appeal allowed.*

Krishnaswami Nayudu, J. Adisesha Ayyar *v.* Pappammal.
12th October, 1949. A A A O. No. 258 of 1946.

Execution petition—Constructive res judicata*—Service in earlier petition by affixture —No finding that it was sufficient service—Effect—Civil Procedure Code (V of* 1908), *Order* 5, *Rule* 19*—Scope*

The principle of *res judicata* should be applied very cautiously to execution petitions. When a notice of execution application is ordered by Court to be served on the defendant and the notice has to be affixed to the door of the dwelling house owing to the absence of the defendant, the Court must either declare it sufficient or order such service as it thinks fit, as it is imperatively required to do so under Order 5, rule 19, Civil Procedure Code, and in a case where it is sought to apply the constructive principle of *res judicata* against the defendant the omission of the Court to make such a declaration as enjoined by the code is fatal

T. V Ramanatha Aiyar and *K. S. Ramamurthi* for Appellant.

T. R. Srinivasan and *S Gopalaratnam* for Respondent.

K.S. ——— *Appeal dismissed.*

Viswanatha Sastri, J. Vinayagam Pillai *v.* Udayappa Chettiar.
12th October, 1949. S. A No. 1674 of 1946.

Madras Estates Land Act (I of 1908), *Sections* 112, 116 *and* 145*—Person other than registered pattadar in possession as owner—When entitled to notice as defaulter.*

Notice to the "defaulter" required by section 112 of the Estates Land Act is merely a notice to the registered pattadar or his heir, if he be dead, or to his transferee whom the landholder is bound to recognise under section 145 of the Act or has in fact recognised as a ryot Where, however the person claiming to be the owner of the holding had not been recognised as a ryot by the landholder he could not be deemed to be a "defaulter" entitled to the notices prescribed by sections 112 and 116 of the Act. A rent sale will not be invalid by reason of the want of notice to him. A sale after such notice to the registered pattadar will be valid But the notices have to be served in the manner prescribed by section 78 (2) of the Act. Where personal service of the notice was neither made nor even attempted to be made the rent sale will be a nullity.

If a landlord is empowered by statute to sell and forfeit the holding of a ryot for the realisation of rent due to him and thereby extinguish the proprietary rights of the ryot, the conditions prescribed by the statute authorising the sale, forfeiture and extinction of the proprietary rights of the ryot should be strictly complied with When a sale held without due notice is invalid it could be treated as a nullity not only by the registered pattadar but by persons having an interest in the holding Where a defaulter dies before the date of the sale his heirs would have to be served with the notice prescribed by section 116 (1) of the Act and section 147 of the Act does not dispense with the necessity for the issue of such notice to the heirs.

Where the Collector usurps the functions of the selling officer by fixing the date, time and place of sale and publishing the proclamation of sale in the village, the rent sale is wholly invalid. (1940) 1 M.L J. 20, applied. The amendment of sections 116 and 117 in 1934 have not affected the principles applicable.

A. Swaminatha Aiyar and *S. Thiagaraja Aiyar* for Appellant.

T. M. Ramaswami Aiyar for Respondent.

K.S. ——— *Appeal dismissed. Leave refused.*

Rajamannar, C J. and *Chandra Reddi, J*
12th October, 1949.

Murugappa Mudaliar *v.* Desappa Nayanim Varu.
Appeal No 312 of 1947.

Execution—Minor judgment-debtor attaining majority in the course of the execution proceedings—Decree-holder if bound to have the debtor declared major—Sale without doing so —Validity

There is no direct authority that the decree-holder is under an obligation to take steps to have it declared that an erstwhile minor judgment-debtor has attained majority after the filing of the execution petition and a sale held without notice to such judgment-debtor as major will not be invalid

20 M L J 479, distinguished.

If the debtor became a major after the execution petition was filed, he could have himself brought that fact to the notice of the Court There is nothing in law which made it obligatory on the part of the decree-holder to have him declared as a major

The Advocate-General (*K Rajah Aiyar*) and *D. Narasaraju* for Appellant

S A Seshadri Aiyangar, K B Krishnamurthi, C A Vaidyalingam and *A N Veeraraghavan* for Respondents

K S. ——— *Appeal allowed in part.*

Viswanatha Sastri, J
12th October, 1949

Sanyasi *v* Guruvulu.
S. A. No 1840 of 1947.

Hindu Widows' Re-marriage Act (XV *of* 1856), *section* 5—*Gift to woman at the time of her marriage subject to custom of community that on her re-marriage the property should revert to her first husband's family—Section does not affect operation of the customary rule.*

Where a gift of jewels made to a woman at the time of her marriage is subject to the custom of the community, that on her re-marriage the property should revert to her first husband's family, section 5 of the Hindu Widows' Re-marriage Act would not affect the operation of the customary rule with reference to the gift

B V Subrahmaniam for Appellant

M S Ramachandra Rao and *M Krishna Rao* for Respondent

K S *Appeal dismissed Leave to appeal refused.*

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Rajamannar, C J and *Chandra Reddi, J*
13th October, 1949

P Venkatachary *v* The Judge, Court of Small Causes, Madras
C M P No 3985 of 1949

Madras Buildings (*Lease and Rent Control*) *Act* (*XV of* 1946)—*Portions of building let separately—Landlord can file an application for obtaining possession of entire house for his occupation*

Though the definition of a building in the Madras Buildings (Lease and Rent Control) Act includes a portion of the building, it does not mean that the owner of a building, portions of which have been let separately, cannot file an application for obtaining possession of the entire house as a building What is sufficient for the landlord is not the real question, but whether he requires the entire building *bona fide* for his occupation.

V. V. Devanathan for Petitioners

G. Chandrasekhara Sastri and *G. Venkatesa Aiyar* for the 2nd Respondent.

K.S. ——— *Petition dismissed.*

Panchapakesa Ayyar, J
19th October, 1949.

Ponnuswami, *In re.*
Cr R C No 1064 of 1948.
(Cr R. P. No 1004 of 1948.)

Indian Penal Code (XLV of 1860), *section* 304-A—*Rash and negligent driving of Motor lorry causing death of pedestrian—Offence—Contributory negligence of the victim—Effect.*

When there is ample proof that a motor lorry driver had brought on the death of a pedestrian by his own negligence and rash driving and attempting to overtake some heavily laden bullock carts on the road, the driver must be found guilty of an offence under section 304-A, Penal Code Contributory negligence, in the strict sense of the term, has no place in *Criminal law* The fact that the victim was tipsy and staggered unexpectedly and contributed to the accident is of no avail The driver could and should have avoided the accident by his care and caution. The contributory negligence of the victim is irrelevant except for the purpose of sentence

S Rangaswami Ayyangar for the Prtitioner

The Assistant Public Procutor (*A S Sivakaminathan*) on behalf of the Crown

K. S

Sentence reduced.

Panchapakesa Ayyar, J.
20th October, 1949

Munuswami Naicker *v* Kanniappa Naicker.
Cr R C No. 353 of 1948
(Cr. R P. No 323 of 1948)

Indian Penal Code (XLV of 1860), *section* 504—*Abuse of a person in his absence—When offence under section* 504.

The gravamen of the charge under section 504 of the Indian Penal Code lies in the utterer provoking the victim by his words to commit an immediate breach of the peace. That can only occur if he utters the words in the presence of the victim or has them conveyed to him by letter or messenger Few sane persons will commit a breach of the peace on mere hearsay evidence, and without even verification In the absence of evidence that the utterer of the abusive words asked some persons to convey his insulting words uttered in his absence to the person abused, a *prima facie* case under section 504 of the Penal Code cannot be said to have been made out

Askar Ali and *A A S Mustafa* for Petitioner

S. Venkatachalam for *B C Seshachalam* for Respondent

The Assistant Public Prosecutor (*A S. Sivakaminathan*) on behalf of the Crown

K.S.

Petition dismissed

Panchapakesa Ayyar, J
20th October, 1949

Vedanta Desikan, *In re.*
Cr R C No 1279 of 1949.
(Cr. R P No 1210 of 1949).

Criminal Procedure Code (V *of* 1898), *section* 544 *and Criminal Rules of Practice, Rule* 384—*Power to summon or not defence witnesses at Government expense—Discretionary.*

The power to summon witnesses for the defence at the expense of the Government is discretionary and not mandatory

Where a person was prosecuted under section 15 of the Madras General Sales Tax Act, for failure to pay the sales tax, it cannot be said that the trial Court was wrong in refusing to summon his costly defence witnesses at public expense. Magistrates will do well when passing orders refusing to summon witnesses at public expense to give reasons for the order, namely, that they do not consider the spending of Government money in the particular cases to be in direct furtherance of the interests of public justice

V. S. Rangaswami Ayyangar for Petitioner.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) on behalf of the Crown.

K. S.

Petition dismissed.

Krishnaswami Nayudu, J. Venkatasubba Reddi *v* Chenchamma
13th October, 1949 C R P No. 938 of 1946.

Civil Procedure Code (V of 1908), *Order* 33—*Petition for leave to sue* in forma pauperis—*Petitioner having some property in which he had saleable interest—Necessity to prove that he was not able to raise monies on the property*

It cannot be laid down as an abstract proposition that in every case where the plaintiff has got a mortgage or a similar claim he cannot be regarded as a pauper. It depended on the circumstances of each case whether the plaintiff could raise money on the property It cannot be said that a person can be held to be a pauper without some further evidence that he was not able to raise monies on the property in which he has got a saleable interest.

A I R. 1934 Mad 561, *relied on.*

Kasturi Seshagiri Rao and *Kasturi Sivaprasada Rao* for Petitioner.

K Umamaheswaram for Respondent.

K.S *Petition allowed and application remanded.*

Krishnaswami Nayudu, J. Veluchami Pillai *v.* Sankaralingam Pillai.
13th October, 1949. C. R P. No 1914 of 1947

Court-Fees Act (VII of 1870), *schedule II, article (B)—Applicability—Appeal against the final decree in a suit for partition—Court-fee payable.*

The appeal against either a preliminary or a final decree, arising out of a suit for partition, must be treated as one incapable of valuation and Article 17 (B) of Schedule II, of the Court-Fees Act is the only Article that would be applicable. Article 1 of Schedule I is not applicable and *ad valorem* court-fee cannot be charged.

Where the subject matter of an appeal against a final decree for partition is the amount of the owelty payable to the plaintiff on partition, as also the amount of the share of profits, consequent on his being declared entitled to a share in profits, they are ordinary incidents in a suit for partition

If an appeal arises in a suit for partition, the court-fee payable will be the fee provided for under Article 17 (B) of Schedule II of the Court-Fees Act

R Sethurama Sastri for Petitioner.

The Government Pleader for the Government (*K Kuttikrishna Menon*).

K S. *Petition allowed.*

Krishnaswami Nayudu, J. Annapurnamma *v* Jagannadham
18th October, 1949 C R P No 133 of 1948.

Limitation Act (IX of 1908), *article* 182 (5)—*Execution petition asking for arrest—Order " Judgment-debtor not found for arrest. Struck off "—If keeps the petition alive*

The decree-holder filed an execution petition on 21st September, 1936, for issue of a warrant for arrest of the judgment-debtor On 23rd September, 1936, an order for arrest was passed. On 21st October, 1936, the following order was passed —

" Judgment-debtor not found for arrest Struck off " A subsequent execution petition was filed on 31st March, 1947, more than 11 years after the order on the previous petition It was contended that the order " struck off " was not a final order and the prior petition must be deemed to have been pending and the present petition was only a reminder to continue the proceedings and therefore Article 182 (5) of the Limitation Act will not apply

Held: In the prior petition ordering issue of warrant, 20th October, 1936 was fixed for return of the warrant after execution as required by Order 21, Rule 24 (3) of the Civil Procedure Code As it was not executed there was nothing more to do, the petition exhausted itself and the order striking off was a " final order " It cannot be said that it was not a judicial order or a final order as is mentioned under Article 182 (5) of the Limitation Act Accordingly the subsequent application filed beyond three years of that order is clearly barred by Limitation

N R C

21 All. 155 not followed
V Parthasarathi for Petitioner
G Chandrasekhara Sastri for Respondent
K S *Petition dismissed*

Panchapakesa Ayyar, J Mohammed Abdul Kadar Marakayar, *In re.*
20th October, 1949 Cr R C No 451 of 1949.
(Cr R P No 401, etc, of 1949).

Penal Code (XLV of 1860), *section* 282—*Owner of boat knowingly and negligently allowing overloading his boat so as to endanger life of the persons carried—Liability to conviction*

The owner of a boat, who knowingly or negligently allows overloading of his boat so as to endanger the life of the persons therein will be liable under section 282, Penal Code. He cannot say that the *tindal* who was in actual charge of the boat was alone liable. 1948 All. L J 354, *distinguished* Even if direct knowledge of the owner of the overloading is not proved, his negligence in that he did not take due care and attention will make him liable.

S. K. Ahmed Meeran for the Petitioner.

The Assistant Public Prosecutor (*A S. Sivakaminathan*) on behalf of the Crown.

K.S. *Fines reduced.*

Govinda Menon and *Basheer Ahmed Sayeed, JJ.* Velayudam, *In re.*
3rd November, 1949. Cr M. P. Nos 2647, etc, of 1949

Madras Ordinance (IV of 1949, *re-enacting Madras Act I of* 1947)—*Sections* 4-*A and* 19—*Validity.*

Section 4-A and section 19 of Madras Ordinance IV of 1949 cannot be held to be *ultra vires* the powers of the Governor.

History and scope of legislation by Ordinance traced.

The power of the Governor to make Ordinances are as wide as the powers of the Legislature and there is no reason why a Governor should not be at liberty to promulgate retrospective Ordinances

A. Ramachandran of *Messrs Row* and *Reddy* for Petitioner.

The Advocate-General (*K Rajah Aiyer*) and *N T Raghunathan* for the Public Prosecutor and the Crown Prosecutor on behalf of the Crown

K S. *Ordinance IV of* 1949 *held* intra vires.

Panchapakesa Ayyar, J. Gopalan, *In re.*
4th November, 1949. S R No 13509 of 1949.
(Cr M. P sought to be preferred).

Criminal Procedure Code (V of 1898), *section* 561 (A)—*Scope—Power to direct that no police officer should be present when a person in jail gives instructions to his vakils in respect of appeals filed by him*

The High Court has the power to safeguard the rights of parties before it in Civil and Criminal cases and those rights have been safeguarded and continued under section 561-A, Criminal Procedure Code and the High Court ought to see that those rights are not infringed. Where a person in jail has appealed to the High Court he has a right to instruct vakils without a police officer being present and taking verbatim short hand notes of his instructions There is no rule under which an appellant can be made under mere executive orders of Government, to submit to the presence of a police officer at the interview between him and his Counsel.

(1945) 1 M L J 86, *distinguished.*

A. Ramachandran of *Messrs Row* and *Reddy* for Petitioner

The Crown Prosecutor (*Govind Swaminathan*) on behalf of the Crown.

K.S. *Petition ordered.*

Viswanatha Sastri, J. Lakshmanaswami *v.* Sitaramamurthi.
12th October, 1949 S. A No. 1879 of 1946.

Hindu Law—Partition—Accounting—Liability for interest.

When interest is realised by a member of the family in possession of family funds, it is to be considered as an accretion to the family by way of income and a share therein must be given to the member suing for partition As between coparceners the fact that the family is engaged in trade does not convert their relationship and the trade into a partnership If the family becomes severed, the family trade is held by the manager who has in respect of it the same duties to perform as in respect of any other item of coparcenary property After the disruption the powers of the manager are not those of a surviving coparcener but of a co-owner or a tenant in common in management. The principle of partnership law cannot be applied in their entirety to the partition of a joint family business as such and the settlement of the accounts of such business In the case of co-owners, the mere fact that one of them realises the common asset or outstanding does not involve a liability on his part to pay interest upon the amounts realised to the other co-owners

K Bhimasankaram and *Vepa P. Sarathy* for Appellant

D Narasaraju and *K B Krishnamurthi* for Respondents

K S ——— *Appeal dismissed. Leave refused.*

Subba Rao and *Somasundaram, JJ.* Soundararaja Pillai *v* Soundararaja Perumal Devasthanam.
12th October, 1949. Appeal No 612 of 1947.

Practice—Referring issues that arise in the case to decision of Commissioner—Propriety.

The main issue in a case was "whether the suit, as framed for rendering explanations with reference to the various claims, is not sustainable and whether the plaintiffs remedy in the circumstances of this case is only by way of claims for definite amounts by surcharge and falsification"

The other issues related to the particular items of misappropriation, etc , stated in the plaint

The District Judge passed a preliminary decree referring the entire matter to the Commissioner for taking evidence and for deciding the issues raised in the case

On appeal, *held*, it is not the province of the Commissioner to decide the issues that arise in the case The procedure followed by the District Judge was entirely wrong and his decree should be set aside

G R Jagadisa Aiyar and *R Sundaralingam* for Appellants

K. V Ramachandra Aiyar and *S Thiyagaraja Aiyar* for Respondents

K S ——— *Appeal allowed.*

Horwill and *Balakrishna Ayyar, JJ* Muthu *v.* Narayanan.
13th October, 1949 L P A. No 1 of 1948.

Hindu Law—Marriage—Asura form—Test—Malabar—Ezhuvas—Receipt of one sovereign by bride's father as memmekanom—*If makes the marriage one in the* asura *form.*

Every marriage in which *memmekanom* is received by the bride's father need not necessarily be a marriage in the *asura* form When that payment is made merely in order to conform to custom or out of respect for tradition, the marriage will not be one in the *asura* form. But when the payment is as a matter of actual fact and not mere form, a bride price, the marriage will be an *asura* marriage When at the time of the marriage the father of the bride gives her property the value of which exceeds the amount of *memmekanom*, there is no room whatever for the application of the notion of "bride price"

K Kuttikrishna Menon and *T. C. Raghavan* for Appellant.

C S Swaminathan and *D A Krishna Variar* for Respondent

K.S. ——— *Appeal dismissed.*

N R C

Govinda Menon, J Kotharayan *v* Muthu.
14th October, 1949 S A No 1053 of 1947.

Limitation and adverse possession—Stani *under Malabar Law—Succeeding* stani—*Position of, for purposes of limitation*

As regards limitation and adverse possession a succeeding *stani* is in the position of a person who inherits an estate so that if the period of limitation has begun to run during the life time of a person who holds the property his successor in interest will also have such period running against him.

41 Mad 4, followed; 28 M L J 669, considered
C Unikanda Menon for Appellant.
K Kuttikrishna Menon and *V Balakrishna Eradi* for Respondents
K S *Appeal dismissed Leave refused.*

Krishnaswami Nayudu, J Krishna Poduval *v* Lakshmi Nethiar.
18th October, 1949 C R. P. No 163 of 1948.

Civil Procedure Code (V of 1908), *section* 152—*Amendment—Scope—Correction of survey numbers of the property in the schedule to the plaint and decree—Permissibility.*

Where there is no dispute as regards the identity of the property nor as regards the boundaries to it and there was no controversy at all at the time of the suit as to the identity of the property which has been the subject of the kanom deed, an amendment to correct the survey numbers can be made In the case of an error as regards the survey numbers which has crept into the plaint and the decree an amendment can be made

(1947) 2 M L J 72 and (1948) 2 M L J 301, referred to.
K P Ramakrishna Aiyar for Petitioner
N. R Sesha Aiyar for Respondent
K S *Petition dismissed.*

Chandra Reddy, J Venkatakrishna Ayyar *v* The Official Receiver.
20th October, 1949 C R P. No 180 of 1949.

Provincial Insolvency Act (V of 1920)—*Inherent power of Insolvency Court—If can be invoked by the Official Receiver to rectify his errors—Sale held by the receiver—If can be set aside.*

The Official Receiver can invoke the inherent jurisdiction of the Insolvency Court to rectify any error or mistake committed by him and the Court has ample power to prevent an injury to the estate resulting from any act or decision of the receiver.

Where the Official Receiver wrongly notified in the proclamation of sale that the property was subject to an encumbrance of Rs 7,000 (while the encumbrance was only Rs 3,500) and the only bidder purchased the property for Rs 255, it is open to the Official Receiver on discovering his mistake to move the Court for setting aside the auction sale and thereby rectify the error committed by him

D Ramaswami Aiyangar and *P S. Srinivasa Desikan* for Petitioner.
V. V. Raghavan and *S Kothandarama Nayanar* for Respondent.
K S *Petition dismissed.*

Horwill and Balakrishna Aiyar, JJ Kannan, *In re.*
24th *October* 1949 Cr.M P. No 2686 of 1949.

Criminal Procedure Code (V of 1898), *section* 196-*A—Sanction under—When essential.*

Where the principal object of a conspiracy was cheating, and the forgery, fabrication of false documents and the like were merely steps taken by one or other of the accused for the purpose of effecting the object of their conspiracy and were clearly subsidiary and subordinate to the main object of cheating, no sanction of the Provincial Government or of one or the other of the authorities mentioned in section 196-A of the Criminal Procedure Code is necessary for the trial

S. Krishnamurthi and *Vepa P Sarathy* for petitioner
The Crown Prosecutor (*S. Govind Swaminathan*) on behalf of the Crown.
K.S *Petition dismissed. Leave to appeal under S.* 411-A, *Cr. P. Code refused.*

Viswanatha Sastri, J Ramalingaswami Naicker *v* Venkataswamy Naicker.
25th October, 1949 A A O No 254 of 1949.

Civil Procedure Code (V of 1908), *section* 47—*Appeal—Order settling terms of sale proclamation—If and when open to appeal*

If there is an order of Court settling the terms of the sale proclamation which does not in any way determine or affect the rights of parties, then the order is not open to appeal But, if in settling the terms of sale proclamation the rights of the judgment-debtors *inter se* or owners of the equity of redemption *inter se* are affected by the order of the Court, then that would be a matter relating to the execution, discharge or satisfaction of the decree and the decision of the Court would be open to appeal at the instance of the aggrieved party

A Swaminatha Aiyar for Appellant.
T P Gopalakrishna Aiyar for Respondent

K S ——— *Appeal dismissed Leave refused.*

Raghava Rao, J Golden Knitting Co *v* Mural Trades (India)
26th October, 1949 A A O No 96 of 1948.

Foreign judgment—Decree passed by Court of Small Causes at Karachi in the Dominion of Pakistan prior to 15*th August,* 1947 *and transmitted for execution—If can be executed in Court in Dominion of India after that date*

The District Court of Coimbatore in the Dominion of India has no power to execute after the 15h August, 1947, a decree passed by the Court of Small Causes at Karachi in the Dominion of Pakistan prior to that date and transmitted for execution after that date by that Court to the District Court of Coimbatore After the appointed date the judgment of the Court at Karachi passed before then became foreign judgment in repect of which execution could only be had if the territory in which the decree in question was passed has become, by an arrangment between the two Dominions, reciprocating territory within the meaning of section 44-A of the Code of Civil Procedure

53 C W N 817, relied on
S. Sitarama Aiyar and *S Rajaraman* for Appellant
C R Pattabhiraman and *R Ramasubbu Aiyar* for Respondent

K S ——— *Appeal allowed.*

Raghava Rao, J Venkatarama Ayyangar *v* Thulasi Ammal.
26th October, 1949 A A O. No 144 of 1949

Guardians and Wards Act (VIII of 1890), *section* 25—*Right of mother to recover custody of her daughter from the minor's paternal aunt's husband*

The refusal by a person to deliver the child to its natural guardian when asked to do so by the latter amounts in effect to a removal from his custody and the natural guardian can therefore apply under section 25 of the Guardians and Wards Act.

A I R 1929 Mad 81, relied on

The section is not limited in its operation to the power of the Court to enforce the guardian's right only in extreme cases of an actual leaving or removal of the ward from the guardian

A I R 1934 Bom 311, relied on.

The word guardian in the section is used in a wide sense and does not necessarily mean a guardian duly appointed or declared by the Court but includes a natural guardian or even a *de facto* guardian Accordingly the mother is entitled to apply for recovery of custody of her minor daughter from her paternal aunt's husband The preference expressed by a child of 13 or 14 is not entitled to much or any weight at all

(1948) 1 M L J 125, relied on
K V. Srinivasa Aiyar for Appellant
S Amudachari for Respondent.

K S ——— *Appeal dismissed.*

Panchapakesa Ayyar, J. Pachiappan, *In re.*
27th October, 1949. Cr R C No 837 of 1949. (Cr R P Nos 773, etc. of 1949).

Penal Code (XLV of 1860), *section* 124-*A—Offence under—Presidency Magistrate—Competency to deal with case—Committal for trial to High Court Sessions—If obligatory*

It is neither desirable nor expedient to commit all cases of sedition, big or small, important or unimportant, sensational or petty, to the High Court Sessions, wasting high judicial power, when minor cases where the accused are comparatively obscure persons who made seditious speeches to comparatively insignificant audiences and the sentences even if they are found guilty and convicted will never exceed the competency of the Chief Presidency Magistrate Where the Chief Presidency Magistrate is well acquainted with the language in which the alleged seditious speeches were made and fully competent to understand them and consider what impression they will make on the audience and is competent to inflict the punishment deserved in such cases if conviction ensues, there is no need to commit the case to the High Court Sessions for trial

(1946) 1 M L.J. 237, distinguished

A Ramachandran for *Rao and Reddy* and *S Krishnamurthi* for Petitioners

The Crown Prosecutor (*S. Govind Swaminathan*) on behalf of the Crown

K S *Petitions dismissed.*

Panchapakesa Ayyar, J. Senapathi Mudaliar *v* Deivanai Ammal.
27th October, 1949. Cr R C. No 796 of 1949. (Cr R P No 734 of 1949).

Criminal Procedure Code (V of 1898), *section* 488—*Separate maintenance for wife—Claim for—Husband who had married again offering to take back petitioner—Award of maintenance—Propriety.*

Where a husband has married again his offer to take back the first wife (who claims separate maintenance) cannot be taken to be sincere Even if he takes her back, he will only make her an unpaid cook and maid of all work for himself and his second wife, an intolerable position and one to which no Court should drive a married woman. In such a case it is correct and proper to award separate maintenance to the first wife

T. V. Srinivasachari for Petitioner

P. Krishnamachari for Respondent.

N T Raghunathan for the Public Prosecutor (*V L Ethiraj*) on behalf of the Crown

K S. *Maintenance reduced.*

Rajamannar, C J and *Krishnaswami Nayudu, J.* Fazmul Rikodas *v* Satyanarayana Chetty.
31st October, 1949. C M P No 3436 of 1949.

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *sections* 7 *and* 2 (3)—*Failure to pay monthly rent—Default—Landlord usually collecting rents at irregular intervals—If of avail—Co-owner of building—If landlord entitled to apply for eviction*

The fact that on grounds of convenience or on other grounds the landlord chose to collect the rent at irregular intervals does not lead to the inference in law that there is an agreement under which the rent is payable only at such intervals. Unless it is proved that there was a term in the agreement that the rent was payable only at particular intervals of time, the tenant who has not paid the monthly rent cannot say that there was no default and resist eviction by his landlord

One of the co-owners who has applied for eviction would certainly be a landlord within the definition of section 2 (3) of the Act

S Suryaprakasam for Petitioner.

P V Subramanyam for Respondent

K.S. *Application dismissed*

[*Full Bench*]
Satyanarayana Rao,
Panchapagesa Sastry and
Raghava Rao, JJ
12*th October,* 1949

Lakshmi
v.
The Official Assignee of Madras.
O S A. No 68 of 1947.

Presidency Towns Insolvency Act (III of 1909), *Section* 36 (5) *and section* 7 *proviso (as amended in* 1927)—*Petition under section* 7, *against insolvent's wife for declaration that property in her name was benami for insolvent—If barred by her examination under section* 36.

Per *Satyanarayana Rao* and *Panchapagesa Sastry, JJ* (*Raghava Rao, J* dissenting) :—

The object of section 36 of the Presidency Towns Insolvency Act is to obtain information regarding the insolvent's property, and after information is obtained if there is an admission in the course of that proceeding, to make a proper order regarding delivery of possession or payment of the debt where there is an admission But the matter arising under sub-section (4) is the dispute relating to the debt, and under sub-section (5) is the dispute relating to title and possession of property. There is no distinction between the two clauses Where proceedings under section 36 (5) are taken against the insolvent's wife who was alleged to be only a benamidar for the insolvent unless she consented to the question of her title being decided by the Insolvency Court, the Official assignee would have to file a suit against the wife in the ordinary way.

I L.R. 1938 Mad 72 overruled.

A petition under section 7 of the Act against the insolvent's wife who was examined under section 36 for deciding the question of title will be barred.

M Natesan for the Appellant.

C. R Rajagopalachari and The Deputy Official Assignee (*Sivaramakrishnayya*) for Respondent.

K S.

Appeal allowed.

Horwill and *Balakrishna Ayyar, JJ.*
20*th October,* 1949

Kuppuswami Ayyar *v.*
Mahadeva Chettiar.
L P. A. No 63 of 1949.

Madras Buildings (Lease and Rent Control) Act (XV of 1946)—*Acceptance of rent after order for eviction—Effect—Transfer of Property Act (IV of* 1882), *Section* 116—*If creates new tenancy*

Section 116 of the Transfer of Property Act has no application to matters arising under the Madras Buildings (Lease and Rent Control) Act. By reason of the acceptance of a cheque for the arrears of rent by the landlord the tenant did not acquire any fresh right to continue in possession of the premises.

D Ramaswami Ayyangar and *S Kuppuswami* for Appellant.

M A Srinivasan and *M A Rajagopalan* for Respondent

K S

Appeal dismissed.

Rajamannar, C J and *Chandra Reddy, J*
27*th October,* 1949

Viswanatha Sastry *v.*
Nadhamuni Chetty.
C M P. No. 4966 of 1949.

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *Section* 7—*Rejection of application for eviction for default in payment of rent—Effect*

Once an application for eviction on default in payment of rent is rejected the tenancy shall be deemed to continue on the same terms and conditions as before and shall not be terminable except on one of the grounds mentioned in sub-section (2) or sub-section (3) of section 7 of the Madras Buildings (Lease and Rent Control) Act If the landlord desires to rely upon default in payment of rent he can only rely upon such default committed after the date of the rejection of the application. The landlord cannot allege in a subsequent application that the tenancy has come to an end before the date of the rejection of the earlier petition.

N R C

V. Ramaswami Ayyar and *T. R Ramachandra Iyer* for the Petitioner
A. Suryanarayana Ayyah and *A Duraiswami Ayyangar* for the Respondent.
K S. ——— *Petition allowed*

[*Full Bench*]

Rajamannar, C J, Govinda Menon, Panchapagesa Sastry, Viswanatha Sastry and Chandra Reddy, JJ.
28th October, 1949

Venkateswarlu *v.* Ramamma.
C. M P. 3926 of 1947.

Civil Procedure Code (V of 1908), *Order* 41, *rule* 22—*Right of respondent in an appeal to prefer objections to the decree without filing separate appeal—Limits*

The provisions of Order 41, rule 22 of the Code of Civil Procedure do not enable one respondent to prefer objections against another respondent at any rate when the objection sought to be taken was one in which the appellants were in no way interested. I L R 38 Mad 705 (F.B) *overruled*, Case law reviewed

Order 41, rule 22 on a proper construction confers only a restricted right on a respondent to prefer objections to the decree without filing a separate appeal. Such an objection should as a general rule be primarily against the appellant In exceptional cases, it may incidentally be also directed against other respondents.

D Munikanniah and *S Vaidyanathan* for Petitioner
G Chandrasekhara Sastri for Respondent
K S ——— *Application dismissed.*

Panchapakesa Ayyar, J.
4th November, 1949

Ellappa Goundan *v.* Ellappa Goundan.
Cr R C No 1197 of 1948.
(Cr. R P. No 1135 of 1948).

Penal Code (XLV of 1860), *section* 500—*Caste panchayat—Privilege—When available—Composite assembly of various castes excommunicating—Liability for defamation.*

It is obvious that while a caste will have a customary right to go into allegations of immorality made against a woman of their tribe in order to safeguard caste purity and prestige, no such customary right has been given for a composite assembly consisting of various castes to join in holding an assembly wherein defamatory statements are made, acted on and a member is outcasted The power to hold enquiries into the unchastity of a woman belonging to a particular caste, and to outcaste, have not yet been given to such composite bodies either by Hindu Law or custom or statute *Privilege* will not be available to members of such an assembly which cannot be said to be a *caste Panchayat* outcasting a member of *that caste* for a *caste offence*

T S Kuppuswami Ayyar and *V Rajagopalachari* for Petitioner
T K Subramania Pillai for Respondent
C. Balasubramaniam for the Public Prosecutor (*V L Ethiraj*) for the Crown.
K S. ——— *Petition dismissed.*

Panchapakesa Ayyar, J.
16th November, 1949

Ramakudumban, *In re.*
Cr R C No 106 of 1949.
(Cr R P No 103 of 1949).

Penal Code (XLV of 1860), *Section* 160—*Gist of offence under*

Three persons beat in a public place a washerman who tamely submitted to the beating without the least retaliation and simply howled in pain They were convicted under Section 160 of the Penal Code On revision

Held : As there was no *fight* so essential to an affray, the accused ought not to have been convicted under section 160 of the Penal Code. An answering challenge or war cry or even an active non-violent resistance might have done. A. I R 1938 Mad 1924 *relied on*

[A retrial was considered unnecessary in this petty case]

J S. Vedamanikkam for Petitioner
The Public Prosecutor (*V. L. Ethiraj*) on behalf of the Crown.
K. S. ——— *Petition allowed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ.
25*th October*, 1949.

Sriramulu Chettiar *v.* Raja Chettiar.
Appeal No 392 of 1946.

Civil Procedure Code (V of 1908), *Order* 7, *rule* 11—*Plaint undervalued—If can be dismissed straightaway—Proper procedure*

Where it is found that a plaint has not been properly valued the Judge should in accordance with the provisions of Order 7, rule 11, Civil Procedure Code, direct the plaintiff to value it properly and only after his failure to do so reject the plaint. Dismissal of the suit because the plaint was undervalued will not be justifiable.

K. V Ramachandra Aiyar and *G R Jagadisa Aiyar* for Appellant

T. L. Venkatarama Aiyar and *M Natesan* for Respondents.

K S. ——— *Appeal allowed and suit remanded.*

Raghava Rao, J.
27*th October*, 1949

Vasudevayya *v.* Bhagirathi Bai.
S A No. 1030 of 1947.

Mortgage—Mortgagee paying up a prior charge decree on the hypotheca to avert its sale in execution—Right to recover—Transfer of Property Act (IV of 1882), *sections* 92 *and* 72 (b) *and Contract Act (IX of* 1872), *section* 69—*Applicability*

A mortgagee who paid up a prior charge decree on the hypotheca in order to avert an imminent sale in execution of the decree can recover the amount paid by him from the mortgagor or his alienees under section 69 of the Contract Act. It is not permissible to give effect to any equitable charge or lien *dehors* the statute. Section 72 of the Transfer of Property Act as it now stands amended, can only support an equity in favour of the mortgagee if there is a compliance with the requirement of the proviso to the section and not otherwise. The right of the mortgagee to add such money to the principal will not exclude the personal right of suit under section 69 of the Contract Act, although if a personal decree has been obtained the amount cannot be tacked to the mortgage. Where the facts are not in controversy the trial Court can adjudicate on the rights of the parties irrespective of the precise legal label employed and the particular legal position envisaged in the plaint

K. Srinivasa Rao for Appellant

K. Y Adiga and *K. P. Adiga* for Respondents.

K.S. ——— *Appeal dismissed. Leave refused.*

Viswanatha Sastri, J.
28*th October*, 1949

Valli Ammal *v* Periathambi Chettiar.
S. A No. 1908 of 1946.

Limitation Act (IX of 1908), *Article* 144—*Applicability—Insolvency of Hindu father—Receiver not taking possession of an item of property which remained with the insolvent's sons—Sale of property by receiver—Suit by purchaser for possession* 12 *years after date of adjudication—Barred by limitation.*

Where on the insolvency of a Hindu father an item of property was not taken possession of by the Official Receiver but remained with the sons of the insolvent and the receiver sold that property to a stranger who filed a suit to recover possession more than 12 years after the date of the adjudication, the suit is clearly barred under Article 144 of the Limitation Act. On the date of the adjudication the Official Receiver became entitled to all the rights which the insolvent had including the right to file a suit for partition and recovery of possession of the insolvent's share of the properties or if he claimed also to exercise all the powers which the insolvent had in respect of the joint family properties to be in possession of the entire properties in the right of the insolvent. In either case the possession of the sons would be adverse to the Official Receiver from the date of the adjudication. It cannot be said that the Official Receiver was in the position of a joint tenant or a co-owner with the insolvent's sons in respect of the properties and that there will be no adverse possession till there had been a demand and refusal.

K. V. Ramaseshan for Appellants.

T. R. Srinivasan for Respondents.

K S. ——— *Appeal dismissed. Leave refused.*

N R C

Viswanatha Sastri, J.
1st November, 1949

Lakshmi Amma *v* Meenakshi Ammal
A. A A O. No. 108 of 1947

Malabar Tenancy Act (XIV of 1930), section 22—Scope and ambit of—Right to renewal —If available to a sub-tenant—Section 26—If applicable.

Section 22 of the Malabar Tenancy Act has to be read with sections 16 to 18 of the Act and the scope and ambit of section 22 is the same as those of sections 16 to 18. Section 22 provides the machinery by means of an application to the Court in order to effectuate the substantive rights conferred or recognised by sections 16 to 18 The expressions "the landlord from whom such renewal is claimed" in section 22 (2) of the Act refers to the immediate landlord who is contemplated by sections 16 to 18 and the words "contract to the contrary" in section 22 (1) also refer to a contract made between the applicant and his immediate landlord and not to a contract to which he is not a party Accordingly a sub-tenant is not entitled to a renewal under section 22 of the Act.

Section 26 of the Act does not apply to a case of an application of renewal and is only relevant in a suit for eviction

V. P Gopalan Nambiar for Appellant.

C. K. Viswanatha Aiyar for Respondent.

K S. ——— *Appeal dismissed. Leave to appeal granted.*

Panchapakesa Ayyar, J.
16th November, 1949.

Venkataswami, *In re.*
Cr R. C No. 1299 of 1948.
(Cr R P. No 1237 of 1948).

Criminal trial—Committal Court—Powers of

The law regarding the powers of a Committal Court is now well-settled, and may be summed up in the following five propositions .

(1) The Magistrate conducting the enquiry is not a machine or a mere post office to see whether there is any evidence against the accused or any of them He is not bound to commit all those against whom any prosecution witness speaks regarding the offence, whether he is believed or not He has to satisfy himself that there are sufficient grounds for committing the accused for trial by a Court of Session, and it is his right and duty to weigh the evidence from that point of view.

(2) He can, for that purpose, look not only into the depositions of prosecution witnesses but also into the depositions of the defence witnesses examined on behalf of the accused

(3) Section 209, Criminal Procedure Code, does not bar a Magistrate from using his own knowledge and experience of men and affairs in judging and in weighing the evidence before him

(4) But he judges and weighs the evidence for the purpose of deciding whether the evidence is such as a judge or jury could reasonably be asked to make it the basis of a conviction If he comes to the conclusion that it is, it is his clear duty to commit But, if he comes to the conclusion that the evidence before him is such that no judge or jury can possibly believe it, he has got the power, and, indeed, it is his duty to discharge the accused If he finds that the evidence against the accused is totally unworthy, and that there are facts on the record which show that no offence in fact was committed, or that one of the offences charged was not committed, or that any one of the accused is clearly shown to have not taken any part in the offence, he must discharge the accused covered by those conclusions. Of course, if his conclusions are manifestly wrong, and not merely one of two possible views, his order can be set aside in revision.

(5) But, if upon any reasonable view of the evidence, a conviction is possible, the case must be committed, and a Magistrate is not empowered to give the benefit of the doubt to an accused person in committal proceedings

C. Kondiah and *R Purushotham* for Petitioner

The Public Prosecutor (*V L. Ethiraj*) on behalf of the Crown.

K.S. ——— *Petition dismissed.*

Viswanatha Sastri, J
24th October, 1949.

Lakshmi Ammal *v.*
Narayanaswami Naicker.
S. A No. 744 of 1947.

Hindu Married Women's Right to Separate Residence and Maintenance Act (XIX of 1946), S 2 (4)—Applicability to pending case—Relief under if can be asked for for first time in second appeal—Second marriage before Act came into force—First wife if entitled to claim separate maintenance and residence under section 2 (4) of the Act.

Where a suit is for future maintenance it is permissible for the High Court in Second Appeal to consider the effect of legislation, like Act XIX of 1946, which came into force after the disposal of the suit by the trial Court and during the pendency of the appeal in the Appellate Court It is open to an appellant (wife) to claim relief for the first time in second appeal on the basis of Act XIX of 1946.

The words " marries again " in section 2 (4) of the Act are merely descriptive of the position of the husband as a twice married man at the date when wife's claim for maintenance is made under the Act and do not exclude a husband who had taken a second wife before the Act came into operation

K. Parasurama Aiyar for Appellant

K V Ramachandra Ayyar for Respondent

K S

Appeal allowed in part Leave refused.

Krishnaswami Nayudu, J
28th October, 1949

Krishnayya *v.* Sree Seethanagara
Veeranganeya Oil Mill.
C R P. Nos. 797 etc. of 1947.

Provincial Insolvency Act (V of 1920), Rule XXI, Clause (3) as amended in 1946—Transferee of properties of insolvent—Right to notice before order of adjudication is passed

By virtue of Rule XXI, Clause (31) of the rules (amended in 1946), under the Provincial Insolvency Act a transferee of the properties of the insolvent is entitled to notice before an order of adjudication is made. An order of adjudication passed without such notice is unsustainable

G C Venkatasubba Rao and *Ch Suryanarayana Rao* for Petitioner.

M S Ramachandra Rao and *M. Subramania Sarma* for Respondent.

K.S

Petition allowed.

Panchapagesa Sastry, J
3rd November, 1949

Swarajya Lakshmi Nancharamma *v.*
Satyanarayana.
S A No 2172 of 1946.

Hindu Married Women's Right to Separate Residence and Maintenance Act (XIX of 1946), Section 2, Clauses (4) and (7)—Justifiable cause for wife's right of separate residence and maintenance—Clause 4 of section 2 applies only when there is a marriage of husband subsequent to marriage of women who claims separate maintenance.

Sub-clause (4) of section 2 of Act XIX of 1946, gives a wife the right for separate residence and maintenance if the husband marries again This clause can only apply if there is a marriage subsequent to the marriage with the lady who is asking for separate residence and maintenance Accordingly a third wife cannot rely on the existence of a second wife for claiming separate residence and maintenance Sub-clause (7) of the section however enables her to get separate residence and maintenance for any other justifiable cause. Sub-Clause (7), is very wide in its language and is designedly intended to take in various circumstances in relation to the particular case before the Court which may make it unjust to compel the lady to live with the husband. It is not possible to give an exhaustive list of such circumstances At the same time it is not intended that advantage should be taken of the generality of the language there to claim a right of separate residence and maintenance merely on the ground of domestic bickerings or incompatibility of temper or minor differences as are not unusual in the married lives of parties and nothing more serious is made out. Thus if the third wife was married

N R C

on the distinct understanding that the husband once for all severed his connections with the second wife and would have nothing more to do with her and that he and the third wife alone would be living together, but the husband has taken back his second wife and settled all his property in her favour, the third wife can claim that it would be unjust and inequitable that she should be compelled to live with her husband

Though Act XIX of 1946, was passed after the case was dismissed by the Court below and before the second appeal was filed, the second appellate Court can take the law as it stood at that date and allow relief to the wife

B V Ramanarasu for Appellant

K Bhimasankaram for Respondent.

K S *Decree set aside and case remanded Leave refused*

Viswanatha Sastry, J
3rd November, 1949

Kattayya Gounden *v* Kannan
S A No 1994 of 1947.

Easement—Sale of some trees standing on poramboke land to plaintiff and adjoining land to defendant—Plaintiff if entitled to have access to defendant's land for collecting produce of trees purchased by him

Ten tamarind trees and four illuppai trees for which the owner had a tree patta were sold to the plaintiff and the adjoining land was sold to defendant. In a suit for an injunction restraining the defendant from interfering with plaintiff's right to go on the defendant's land and having access to the trees belonging to the plaintiff for the purpose of collecting the produce of those trees,

Held The plaintiff is not entitled to go on the defendant's land in order to gather the fruits that fall there from such portions of the trees as project over the defendant's land The right claimed is not an easement and the plea of an express contract having been negatived the suit must necessarily fail

(1938) 1 M L J 510 *distinguished*

V. V Raghavan for Appellant

B. V. Viswanatha Aiyar for Respondent.

K S *Appeal dismissed. Leave refused*

Govinda Menon, J
4th November, 1949.

Periyayya Moopan *v*
Marudai Konar
S A. No 1341 of 1947.

Usufructuary mortgage—Earth and sand on the land—Mortgagee if entitled to make into bricks and appropriate—Rights of mortgagor

Where the usufructuary mortgage deed does not confer any proprietary right in the soil in the mortgagee, the mortgagee is not justified in converting the mud and sand found in the land into bricks even though such an action amounted to an improvement of the land for agricultural purposes The mortgagor is entitled to the market value of the mud and sand utilised in making the bricks and the mortgagee cannot be made liable to account for the profits earned by him in the brick making operation

N Rajagopala Ayyangar and *T. V Ramanatha Aiyar* for Appellant.

M S Venkatarama Aiyar for Respondent.

K S *Appeal dismissed.*

Rajamannar, C.J and Krishnaswami Nayudu, J
8th November, 1949

Ramanatha Iyer *v.*
Premier Bank of India, Ltd.
C M P No 5503 of 1949

Madras Buildings (Lease and Rent) Control Act (XV of 1946), section 4 (5)—Increasing of fair rent by Controller—Appellate authority—Interference by—Grounds.

In allowing increase in fair rent what the Controller and the appellate authority are concerned with is the building in the occupation of the tenant It might be part of a larger premises, but 'building', according to the definition in the Act means any part of a building let separately. It is not open to the appellate authority

to take into account the rent derived by the landlord from the entire building (made up of portions let out separately) and reduce the fair rent fixed by the Controller. It constitutes an error apparent on the face of the record making the order liable to be quashed

An appellate authority has no doubt got jurisdiction to say that the opinion of the Controller was based on wrong premises of fact or law or that it was otherwise perverse But an appellate authority in deciding the appeal from the opinion of the Controller has no jurisdiction to interfere with the opinion of the Controller on a ground which is erroneous in law

V. Rajagopala Mudaliar for Petitioner

S Ramachandra Ayyar and *M A Srinivasan* for first Respondent

K S — *Order quashed*

Govinda Menon and Basheer Ahmed Sayeed, JJ
16th November, 1949

Subramaniam, *In re.*
Cr M P No 818 of 1949

Madras Maintenance of Public Order Act (I of 1947), *section* 2 (1)—*Repatriate from Malaya—Order of detention—Validity*

In the detention order against a repatriate from Malaya it was stated *inter alia* . " It is considered that these repatriates from Malaya are likely to find considerable scope for intensifying their communist activities From their activities in Malaya it is likely that they will resort to violence and also to invite the masses to indulge in violent and subversive activities It is considered detrimental to public interest to allow them to move amongst the public "

Held As the detaining authority was satisfied that the repatriate was likely to act in a manner prejudicial to the public safety of the Province and that his detention was necessary, the order cannot be interfered with

Since the object of the Act is essentially preventive, if the detaining authority is satisfied from the antecedents of the person sought to be detained that he is likely to act in the same manner hereafter as he had been doing in the past, then it is perfectly open to the detaining authority to pass an order of detention It is not necessary for the detaining authority to wait until mischief is done before preventive sections are invoked

N S Mani for *Row and Reddy* for Petitioner

The Crown Prosecutor (*S Govind Swaminathan*) on behalf of the Crown

K S — *Petition dismissed.*

Panchapakesa Ayyar, J
17th November, 1949

Gervase, *In re.*
Cr R C No 852 of 1949.
(Cr R P No 788 of 1949).

Madras Buildings (Lease and Rent Control) Act (XV of 1946), *section* 3 (2)—*Disobedience by landlord of order of Collector by refusing to give possession of premises allotted for locating Police station—Offence—Liability to conviction under section* 188, *Penal Code.*

A landlord disobeying the order of the Collector by refusing to give possession of his premises allotted for locating a police station is liable to conviction under section 188 of the Penal Code The Penal Code will apply whenever its application is not expressly or by necessary implication excluded Though no penalty for breaches under section 3 (2) of the Madras Buildings (Lease and Rent Control) Act, is provided, the general law of the land under the Penal Code comes into operation and punishment under the Penal Code can be inflicted for disobedience of an order under section 3 (2) of the Madras Buildings (Lease and Rent Control) Act The Collector has got the power to require a building for a Governmental purpose or for the use of any officer of the Government

In a case of orders made by the Collector as a public functionary and for public purposes all the conditions under section 188 of the Penal Code are satisfied and the Collector has ample jurisdiction to lay the complaint under section 188 of the Penal Code

K Narayanaswami Mudaliar for Petitioner

The Crown Prosecutor (*S Govind Swaminathan*) on behalf of the Crown

K.S. — *Sentence modified.*

Govinda Menon and Basheer Ahmed Sayeed, JJ
18th November, 1949.

Velayudam, *In re*
Cr M P Nos 2647 to 2650 of 1949.

Madras Maintenance of Public Order Act (I of 1947)—*Act held on* 10*th October*, 1949, *to have died a natural death—Orders of detention under the Act on* 11*th October*, 1949—*Illegality—Ordinance IV of* 1949 *validating orders—Effect.*

After Madras Ordinance I of 1949 was held on 10th October, 1949 to be *ultra vires* the Provincial Government or any delegated authority had no jurisdiction to exercise any power or authority under Madras Act I of 1947 at all Accordingly the action of the Commissioner of police on 11th October, 1949, in ordering the detention of some persons under Madras Act I of 1947 which had long ago died a natural death was illegal and void But Ordinance IV of 1949 by section 19 validated all the acts done or purporting to have been done in pursuance of Madras Act I of 1947 and such orders of detentions have now been legalised and justified.

N. S. Mani for *Row and Reddy* for petitioner

The Crown Prosecutor (*S Govind Swaminathan*) on behalf of the Crown

Petitions dismissed Leave to appeal under section 205, *Constitution Act, refused*

K.S.

Panchapakesa Ayyar, J.
24*th November*, 1949

Munuswamy, *In re*
Cr A No 432 of 1949.

Penal Code (XLV of 1860), *section* 353—*Persons illegally taken into custody by constable escaping—Subsequent criminal force by pelting stones at constable—Offence.*

A constable interfering in an affray in order to prevent it is only discharging his duty as a public servant, though he may not be entitled to arrest the persons committing an affray, as it is a non-cognisable offence If as a result of his warning to persons committing the affray to desist from committing the affray or even as a result of his taking them illegally into his custody for persisting in the affray, he is subjected in revenge to criminal force by pelting stones, after the persons have escaped from his custody and there is no need to inflict any criminal force on him for the purpose of such escape, the offence under section 353, Penal Code will be made out.

S S Bharadwaj for Accused

The Public Prosecutor (*V L. Ethiraj*) on behalf of the Crown.

K S. *Acquittal set aside.*

Panchapakesa Ayyar, J
30*th November*, 1949

Venkataraya Chetty, *In re.*
Cr M P. No 2291 of 1949

Criminal trial—Transport of goods belonging to another by a lorry at night time in contravention of rules—Conviction of lorry driver—Goods carried if can be confiscated.

Confiscation of jaggery which belonged to another for the offence committed by the lorry driver whom he had engaged to transport it and who transported it at night against the rules is not justified, unless it is proved that the offence of transporting the jaggery during the night was committed by the lorry driver with the knowledge or connivance or criminal negligence of the owner of the jaggery. There is a presumption of innocence under the law, and no man shall suffer in person or property normally unless he is proved to have had the necessary *mens rea* Mere *suspicion* of knowledge or connivance or criminal negligence will not do even for confiscation. Nor will the act of a servant or agent or carrier do

V. Rajagopalachari for Petitioner.

The Assistant Public Prosecutor (*A S Sivakaminathan*) on behalf of the Crown.

K. S. *Petition allowed.*

Raghava Rao, J Arumuga Mudaliar *v* Muruga Mudaliar
1st November, 1949 A A O No 255 of 1946

Registration Act (XVI of 1908), *section* 17 (1) (*b*), (*c*) *and* (*d*) *and section* 49—*Applicability—Hand-letter reciting "having settled with you the lease for a period of four years the sum of Rs* 710 *has been received by me and this letter given"—If requires registration—Admissibility in evidence.*

A hand-letter by a lessee to the lessor ran as follows —"Having settled with you the *kuthagai* of two items of land (details of the lands are given in the document) for a period of four years, the sum of Rs 710 has been received by me and this letter given" The letter was unregistered In a suit by the lessee for damages for breach of contract and for refund of the money paid,

Held, the document does not fall within clause (*d*) or clause (*b*) of section 17 (1) of the Registration Act It is not, whether in substance or in form, itself a lease as defined by section 2 (7) of the Act The instrument rather attracts clause (*c*) of section 17 (1) as being an acknowledgment of the receipt of consideration on account of the creation of the right, title or interest to or in the leasehold under the concluded agreement in the nature of a present demise The document is admissible in evidence for the collateral purpose of deciding on its terms that an anterior contract of lease had come into existence between the parties before the document in question itself came into being

38 M L J 313 L R 46 I A 285 I L R 43 Mad 244 (P C.), relied on

K Bhashyam and *A Srirangachariar* for Appellant

T L Venkatarama Aiyer and *M. C Srinivasan* for Respondents

K S *Appeal dismissed*

Horwill and Balakrishna Ayyar, JJ Bala Venkata Reddi *v* Narayana Reddi
7th November, 1949 A A O No 319 of 1946.

Provincial Insolvency Act (*V of* 1920), *section* 75 (3)—*Appeal against order allowing an application by two creditors of the insolvent to set aside sale held by receiver—Not competent without leave of Court—Admission of appeal as matter of routine—If amounts to grant of leave*

An appeal from an order of the District Judge allowing an application by two creditors of an insolvent to set aside the sale held by the Official Receiver of certain properties of the insolvent is not competent without the leave of either the District Court or the High Court The leave referred to in section 75 (3) of the Provincial Insolvency Act is clearly leave granted by a Judge of the High Court and not by any administrative officer The admission of the appeal as a matter of administrative routine in the office is not tantamount to the the grant of leave

R Rajagopala Aiyar for Appellant

Kasturi Seshagiri Rao, Kasturi Sivaprasada Rao, S V Venugopalachari and *P S S Rama Rao* for Respondents

K S *Appeal dismissed*

Raghava Rao, J Ammalu *v* Govinda Pillai.
7th November, 1949 S A No 2164 of 1946

Madras Co-operative Societies Act (*VI of* 1932)—*Rules under rule* 10, *sub-rule* 5—*Sale in execution of an award obtained by a co-operative society—Purchase by society—Sale certificate if essential to vest property*

In a sale in execution of an award obtained by a co-operative society a sale certificate is not an indispensable condition pre-requisite for accrual of title It cannot be said that sale certificate is the *sine qua non* of the accrual of title to the purchaser or shall operate as the only evidence of the fact of the execution sale and purchase or the title created by the sale on its confirmation

N R C

T. L. Venkatarama Aiyar for Appellant.

Messrs. Pais, Lobo and *Alvares* for Respondent.

K. S. *Appeal dismissed. Leave refused.*

Satyanarayana Rao and Viswanatha Sastri, JJ.
16th November, 1949.

Ramaswami Ayyangar *v.*
Commissioner of Income-tax.
Case Referred No. 39 of 1946.

Income-tax Act (XI of 1922), section 10 (2) (iii) and (xi)—Scope—Money-lending business—Sum paid as interest for default of paying estate duty in Ceylon—If allowable as deduction—Overdrawing by employee—If can be deducted as bad debt on his death.

In order to enable a money-lender to write off a debt as a bad or irrecoverable debt, he must in the first instance show that it was even from the very beginning a loan and not an advance or overdrawing of an employee or servant. The fact that subsequently a promissory note was taken would not affect the nature of the transaction at its inception and would not enable the assessee to rely upon clause (xi) of section 10 (2) of the Income-tax Act.

Amount paid as interest for default of paying estate duty in Ceylon is not allowable as a deduction either under section 10 (2) (iii) or 10 (2) (xi) of the Income-tax Act.

K. Bhashyam and *T. R. Srinivasa Ayyangar* for Applicant.

C. S. Ramarao Saheb for Respondent.

K. S. *Reference answered in favour of the Income-tax Commissioner.*

Panchapakesa Ayyar, J.
30th November, 1949.

Venkataswami, In re.
Crl. R. C. No. 1572 of 1949.
(Cr. R. P. No. 1489 of 1949).

Railways Act (IX of 1890), section 120—Applicability and scope.

Hurling down a bundle of bangles of a fellow passenger and breaking them will not allow a passenger even though he is a Railway official travelling in the train, not liable under section 120 of the Railways Act, as such an act is not an act done or doable by a Railway servant as such.

A. I. R. 1937 Bom. 357, distinguished.

B. Lakshminarayana and *S. Subbiah Chowdry* for Petitioner.

K. S. *Petition dismissed.*

Panchapakesa Ayyar, J.
1st December, 1949.

Gangalamma *v.*
Venkatarami Reddi.
Cr. R. C. No. 1355 of 1948.
(Cr. R. P. No. 1282 of 1948).

Criminal Procedure Code (V of 1898), section 488—Deliberate attribution of immorality falsely to wife—If entitles wife to live separately and claim separate maintenance.

Deliberate attribution of immorality falsely to a wife will certainly fall under the definition of a legal cruelty and entitle a wife to live separately from such a husband and claim separate maintenance.

T. Ramaprasada Rao for Petitioner.

S. V. Venugopalachariar for Respondent.

The Assistant Public Prosecutor (*A. S. Sivakaminathan*) on behalf of the Crown.

K. S. *Petition allowed.*

Panchapakesa Ayyar J.
2nd December, 1949

Krishnamurthi, *In re*
Crl R C No. 994 of 1949
(Cr R P No 928 of 1949).

Madras City Police Act (III of 1888), *section* 37 (4)—*Receiving bets within race course by a person not authorised to do so—Offence.*

It cannot be said that receiving bets inside a race course by any one would be no offence and that what the regular race course authorities could do with impunity others also could do Only those authorised to receive bets are exempt A person receiving bets inside the racecourse who has not been authorised can be convicted under section 37 (4) of the City Police Act

M. A Ghatala for Petitioner

The Crown Prosecutor (*S Govind Swaminathan*) on behalf of the Crown

Petition dismissed.

K S

Panchapakesa Ayyar, J
5th December, 1949

Nagaratnammal, *In re*
Crl R C No 1553 of 1949.
(Cr R P. No 1470 of 1949).

Madras Buildings (Lease and Rent) Control Act (XV of 1946)—*Exchange of buildings by two persons—Involves vacancy of both buildings—Failure to notify vacancy—Liability*

An exchange of buildings by two persons inevitably involves the vacancies of both buildings Failure to notify the vacancy of the building fetching a rent of Rs 35 to the Controller and take his permission to occupy it renders him liable to conviction

Under section 3 (2) of the Act " rent " means the actual rent " paid or payable and not a " fair rent " when none has been fixed. A person actually receiving from another Rs 35 as rent in hard cash cannot be allowed to quibble and say that the actual rent will be much less

J Seethamahalakshmi for Petitioner

The Crown Prosecutor (*S. Govind Swaminathan*) on behalf of the Crown.

Fine reduced.

K S

END OF (1949) II M.L J